S. HRG. 98-1159

COMMENCEMENT OF TERMS OF OFFICE OF THE PRESIDENT AND MEMBERS OF CONGRESS

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S.J. Res. 71

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATIVE TO THE COMMENCEMENT OF THE TERMS OF OFFICE OF THE PRESIDENT, VICE PRESIDENT, AND MEMBERS OF CONGRESS

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

Page

Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah, chairman, Subcommittee on the Constitution 1
Thurmond, Hon. Strom, a U.S. Senator from the State of South Carolina, chairman, Committee on the Judiciary 2
Grassley, Hon. Charles E., a U.S. Senator from the State of Iowa 3

PROPOSED LEGISLATION

S.J. Res. 71, a joint resolution proposing an amendment to the Constitution of the United States relative to the commencement of the terms of office of the President, Vice President, and Members of Congress 4

CHRONOLOGICAL LIST OF WITNESSES

Pell, Hon. Claiborne, a U.S. Senator from the State of Rhode Island, and Hon. Charles McC. Mathias, Jr., a U.S. Senator from the State of Maryland 5
Scott, Hon. Hugh, a former U.S. Senator from the State of Pennsylvania 72
Macy, John W., Jr., National Executive Service Corps, and Harrison Wellford, Esq 78
David, Paul T., professor emeritus, University of Virginia; Stephen J. Wayne, professor of political science and public affairs, George Washington University; and Norman J. Ornstein, visiting scholar, American Enterprise Institute 93

ALPHABETICAL LIST AND MATERIAL SUBMITTED

David, Paul T.:
Testimony 93
Draft of proposed constitutional amendment on date of election, convening of Congress, and inauguration of the President 94
Prepared statement 96
Macy, John W., Jr.: Testimony 78
Mathias, Hon. Charles McC., Jr.:
Testimony 70
Prepared statement 71
Ornstein, Norman J.:
Testimony 108
"After the People Vote, Steps in Choosing the President," edited by Walter Berns, published by the American Enterprise Institute for Public Research, Washington and London 111
Prepared statement 160
Pell, Hon. Claiborne:
Testimony 5
" 'Lame Duck' Sessions of Congress from 1933 through 1980," by Richard S. Beth and Richard Sachs; summary prepared by the Congressional Research Service, the Library of Congress, September 24, 1982 8
"Time Span Between Election or Selection of an Official and the Subsequent Taking of Office in Various Foreign Countries," summary prepared by members of the staff, Library of Congress 17
Scott, Hon. Hugh:
Testimony 72
Prepared statement 76

Page

Wayne, Stephen J.:
Testimony 98
Prepared statement 102
Wellford, Harrison:
Testimony 80
Prepared statement 83

APPENDIX

Additional Submissions for the Record

"Shortening the Interregnum," by Arthur Schlesinger, Jr., April 19, 1984 171
"The Carter-Reagan Transition: Hitting the Ground Running," by James P. Pfiffner, associate professor of political science, California State University, Fullerton; from the Presidential Studies Quarterly, vol. 13, fall 1983 174
"What's Wrong With Transitions," by Lincoln P. Bloomfield; from Foreign Policy, No. 55, summer 1984 197

Correspondence

Letter to President Carter, from Senator Claiborne Pell, March 21, 1984 206
Enclosures:
Letter to President Carter, from Senators Claiborne Pell and Charles McC. Mathias, Jr., March 21, 1984 207
Letter to Hon. Charles McC. Mathias, Jr., from President Gerald R. Ford, April 2, 1984 208
Letter to Hon. Orrin Hatch, chairman, Subcommittee on the Constitution, from Jack H. Brier, president, National Association of Secretaries of State, April 23, 1984 209
Enclosures: Letters to Jack H. Brier, president, National Association of Secretaries of States, from:
Commonwealth of Virginia, March 15, 1984 210
State of North Dakota, March 19, 1984 211
State of South Dakota, March 19, 1984 212
State of Colorado, March 20, 1984 213
State of Nevada, March 20, 1984 214
State of Vermont, March 20, 1984 215
State of Louisiana, March 21, 1984 216
State of Montana, March 21, 1984 217
State of Wyoming, March 21, 1984 218
American Samoa Government, March 23, 1984 219
State of Nebraska, March 23, 1984 220
State of Arizona, March 25, 1984 221
State of New Jersey, March 26, 1984 222
State of Connecticut, March 27, 1984 223
State of Oregon, March 27, 1984 224
State of Rhode Island and Providence Plantations, March 27, 1984 225
State of Tennessee, March 27, 1984 226
State of Utah, March 27, 1984 227
Commonwealth of Puerto Rico, March 29, 1984 228
State of South Carolina, April 4, 1984 229
State of Georgia, April 16, 1984 230
State of North Carolina, April 21, 1984 231

COMMENCEMENT OF TERMS OF OFFICE OF THE PRESIDENT AND MEMBERS OF CONGRESS

TUESDAY, APRIL 24, 1984

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to call, at 10:04 a.m., in room SD-226 of the Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the subcommittee), presiding.

Present: Senators Thurmond and Grassley.

Staff present: Dick Bowman (full committee); Stephen J. Markman, chief counsel and staff director; Dee V. Benson, special counsel; Carol Epps, chief clerk; Marianne Hansen, clerk; and Bob Feidler, minority chief counsel (Subcommittee on the Constitution).

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. As chairman of the Senate Judiciary Committee's Subcommittee on the Constitution, it is my pleasure to call this hearing to order.

We are here today to consider and discuss Senate Joint Resolution 71, a proposed amendment to the U.S. Constitution. This constitutional amendment calls for the term of office of the President of the United States to commence on November 20 in the year of election, rather than January 20 as at present; and for the terms of office of Members of Congress to commence on November 15 in the year of election, rather than January 3, as is presently the case. This joint resolution is sponsored by Senator Claiborne Pell and Senator Charles Mathias.

Proponents of the measure suggest that, just as the 20th amendment was necessary in 1932 to move Inauguration Day from mid-March to January 20, a similar expedited change is needed today. There is no justification, it is argued, for the 8-week hiatus between election day and Inauguration Day in our modern technological world. It is said the present lameduck terms of office in both the Presidency and Congress are not only wasteful and inefficient but also potentially dangerous. The leaders of other nations are reluctant to deal with a lameduck President. The Iranian hostage situation that existed during the transition from President Carter to President Reagan is cited as an example of such reluctance. It is also argued that there is no good reason for a lameduck President

presenting his successor's budget or delivering the State of the Union Address.

The main fear regarding lameduck Members of Congress is that laws may be passed by those who no longer represent the people.

On the other side of the debate, opponents of the proposed constitutional amendment argue that the present time interval is satisfactory and that no compelling reason has been demonstrated for a constitutional amendment. They argue that the present time periods between election and inauguration are needed for a smooth transition between outgoing and incoming administrations.

Opponents further argue that the selection by a new President of important Cabinet and other top-level officers must be carefully selected and should not be hurried. Our form of government is significantly different from other countries, such as Great Britain, where changes in the top-elected officials do not carry the repercussions we feel with a change of Presidents.

To assist the subcommittee in its consideration of the proposed constitutional amendment, we have invited several distinguished and knowledgeable witnesses. Every attempt has been made to hear from both sides on this issue.

[The prepared statements of Senator Thurmond and Senator Grassley follow:]

PREPARED STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

Mr. Chairman, Senate Joint Resolution 71 proposes that the Constitution be amended to change the dates on which the terms of the President, Vice President, and Members of Congress begin. If adopted, this amendment would change the beginning of the terms of the President and Vice President, presently set by the Twentieth Amendment at noon on January 20th, to noon on November 20th. The commencement of the terms of Senators and Congresmen would likewise be moved back from noon, January 3rd to noon, November 15th. These changes are intended to accomplish several things.

First, the period between the Federal election day and the beginning of the term of the President—a period of potential danger to the continued well-being of the Republic—would be drastically reduced.

Second, assuming that there was a change in the Administration, the major messages from the Chief Executive to Congress such as the State of the Union address and the newly proposed budget, would become the responsibility of the new Administration. Assuming that the practice of presenting these messages after mid-January would be continued, the new President would have an additional two months in which to prepare these communications.

Next, the additional time given the Senate and the House of Representatives in November and December could be used to improve the scheduling of congressional functions. Ostensibly, both Houses of the Congress could utilize this time to organize themselves and prepare for the heavier legislative workload which usually begins with the receipt of the budget.

Finally, changing the date of the inauguration of the President and the Vice President would have the potential for allowing this event to occur during weather better suited to an outdoor activity.

Proposals such as the one embodied in S.J. Res. 71 have been introduced into Congress for more than two decades. Momentum for such change has apparently not been great due to the fact that in order to effectuate it would also require a change in the Federal election day. While this would not present a major obstacle for the Federal government, altering the general election day would have the potential for creating substantial problems for the States, many of which have the general election date set in their State constitutions.

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Thank you Mr. Chairman.

I am pleased to be able to be here today to hear the testimony of some of this body's most distinguished present and former members on S.J. Res. 71. This amendment would abolish lame-duck sessions of the Congress by ending post-election sessions of the Congress on the Fifteenth Day of November of even-numbered years, rather than on the Third of January of odd-numbered years.

Lame-duck Congressional sessions and "lame duck" presidents, it is argued by the proponents of this amendment, are inherently undemocratic in that there is no way for the public to effectively express its disapproval of actions taken by the Congress after the election. Sometimes, it seems, that the only thing that these post-election sessions of the Congress do is raise taxes and congressional salaries. But at the same time, these sessions may be the only occasions in which members of the Congress are willing to "bite the bullet" and make the tough decisions that must be made on the budget.

As one Senator that has not developed a position on this amendment, I look forward to hearing today's testimony and an opportunity to review the record of this hearing.

[The joint resolution, S.J. Res. 71, introduced by Senator Pell, follows:]

II

98TH CONGRESS
1ST SESSION

S. J. RES. 71

Proposing an amendment to the Constitution of the United States relative to the commencement of the terms of office of the President, Vice President, and Members of Congress.

IN THE SENATE OF THE UNITED STATES

MARCH 23 (legislative day, MARCH 21), 1983

Mr. PELL (for himself and Mr. MATHIAS) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to the commencement of the terms of office of the President, Vice President, and Members of Congress.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission to the States for ratification:

"The terms of the office of the President and Vice President shall end at noon on the twentieth day of November, and the terms of Senators and Representatives at noon on the fifteenth day of November of the years preceding the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.".

Senator HATCH. As chairman of the subcommittee, I would like to thank each of our witnesses for coming. Our first witness is Senator Pell. He is the chief draftsman of this proposal and is of course very knowledgeable about government and congressional affairs. We are pleased and honored to have him appear before the subcommittee this morning. I would also like to thank him for the extensive efforts he and his staff have made with my staff in arranging for this hearing.

Our second witness at the table, of course, is our distinguished Senator from Maryland, my good friend, Charles McC. Mathias. He is the cosponsor of Senate Joint Resolution 71 and a very important member of the full Judiciary Committee in this Congress. Senator Mathias is a member of the full Judiciary Committee, as I have mentioned, and we are certainly pleased to welcome both of you here this morning.

So, Senator Pell, we will begin with you.

STATEMENTS OF HON. CLAIBORNE PELL, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND, AND HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator PELL. Thank you very much, Mr. Chairman, for permitting me to appear before you today as the sponsor, together with Senator Mathias, of the legislation we are considering, Senate Joint Resolution 71.

And I want to extend to you my heartfelt thanks and gratitude for agreeing to hold a hearing on this proposal and for the really outstanding cooperation we have had from your staff and the committee and the staff of Senator Mathias in preparing for this hearing.

My own testimony will be brief, because I know we all want to allow the greatest time possible to hear the informed and expert views of the witnesses who have agreed to appear today to present the arguments pro and con concerning this proposed amendment to our Constitution.

The Constitution now provides, in the 20th amendment, that the terms of Senators and Representatives shall begin at noon on January 3, following their election, and the terms of office of the Presi-

dent and Vice President shall begin at noon on January 20, following their election.

The amendment that Senator Mathias and I propose provides that the terms of Senators and Representatives shall begin at noon on November 15, following election, and the President and Vice President shall begin their terms at noon on November 20, 5 days later, following their election.

I have proposed this change with Senator Mathias because it appears to me to be clear that the time now provided between Federal elections on the Tuesday after the first Monday of November and the installation of elected officials is much too long, and this prolonged transition imposes serious disadvantages for a democratic government in the conduct of both our domestic and foreign affairs.

Obviously, we do not require 2 to 2½ months to determine who the victors are in our Federal elections. Indeed, our problem is that the results of our elections seem to be known too soon, through vote projections by the news media before the polls have even closed. Voting machines, computerized data processing and instant communications make it possible for the American people to know rapidly the results of our elections.

Having cast their votes and expressed their will, our people deserve a prompt installation of the Government they have chosen, and a prompt implementation of the policies they have endorsed.

Instead, the American people are confronted with a seemingly interminable transition period, with the Government still formally in the hands of a lameduck President and a lameduck Congress.

The term "lameduck" is absolutely appropriate. A lameduck can't fly and a lameduck President or Congress cannot accomplish very much either. They have been deprived of the real authority which rests on the consent of the governed, but they still bear the responsibility for the conduct of government.

The lameduck transition period holds a strong temptation for mischief on the part of the lameducks through hasty implementation—by legislation, regulation, or appointment—of policies rejected or brought into question by the elections.

In our foreign affairs, the prolonged transition is a time of greater vulnerability for our Nation. Other nations during our transition can either seek immediate action on outstanding problems or postpone actions and pending agreements in the expectation of better results with a new administration. In either case, other nations are given policy and bargaining options that are clearly to their advantage and clearly to the disadvantage of the United States.

At best, a long transition period is a time when the ship of state lies becalmed in the waters. At worst, the transition can be a period of unwise decisions or at least decisions that do not reflect the expressed will of the American people.

For the President-elect, the long transition also poses serious problems. As he or she turns from an election campaign to forming a government, the President-elect faces a long period of intense competition for influence and ascendancy in the new administration. It is a period of leaked rumors and reports which threaten to

weaken or undermine a new administration before it has even taken office.

And with a long transition period we have seen in the past decade the development of hugely elaborate transition mechanisms replete with task forces, blueprints, position papers, and transition staffs numbering thousands and costing millions of dollars.

The cost of this transition effort now exceeds the $2 million provided by the Congress, and, in our most recent transition, funding was provided through private contributions resulting in questions about the sources and uses of those funds.

In summary, the very long transition period is clearly unnecessary and presents an opportunity for either serious problems or simple mischief that our Nation can well do without.

LAMEDUCK CONGRESSIONAL SESSION

In the Congress, lameduck periods and lameduck sessions are nearly always unproductive, sharply criticized by public and the news media, and may result in actions unrepresentative of the will of the people.

In our most recent lameduck congressional session, in 1982, decisions on national policy were being made in a House of Representatives in which 81 of the 435 Members, or 19 percent of the membership, had either not sought reelection or had been defeated. In the Senate, 5 of the 100 Members, or 5 percent, were lameducks.

Mr. Chairman, the Library of Congress has prepared a summary of the lameduck sessions of the Congress held since 1933, and I submit that summary to the subcommittee for its consideration.

Senator HATCH. Without objection, we will include it in the record.

[The following was received for the record:]

1624
Congressional Research Service
The Library of Congress

MAIN FILE
TYPED REPORT

Washington, D.C. 20540

"LAME DUCK" SESSIONS OF CONGRESS FROM 1933 THROUGH 1980

by
Richard S. Beth
and
Richard Sachs
Analysts in American National Government
Government Division
September 24, 1982

INTRODUCTION

A "lame duck session" of a Congress is one that takes place after the elections for the succeeding Congress have been held, but before the conclusion of the constitutional term of the expiring Congress. In modern usage, the expression "lame duck" is applied to an office-holder when the time at which he or she will leave office is already definitively set. Members of a Congress who do not seek, or who do not gain, re-election, and who sit in a post-election session, are "lame ducks" in this sense, and give their name to the session as a whole.

The Twentieth Amendment to the Constitution provided that terms of Members of Congress begin and end on January 3 of odd-numbered years, and that regular sessions of Congress are to begin on January 3 of each year (unless a different date is set by law). This Amendment was ratified in 1933, and took full effect with the beginning of the 74th Congress in 1935. Prior to this Amendment, the term of a Congress began and ended on March 4 of odd-numbered years, and regular sessions of Congress began in December of each year. As a result, a Congress elected in an even-numbered year would first come into session in December of

the next (odd-numbered) year, and would meet for its second regular session in December of the following (even-numbered) year, after the succeeding Congress had already been elected. Before 1933, in other words, the last session of every Congress was a "lame duck" session that lasted no more than four months. This circumstance was one of the considerations prompting the adoption of the Twentieth Amendment.

Under current circumstances, any session of Congress held after election day in November of an even-numbered year, but before the following January 3, when the term of the new Congress begins, is a "lame duck" session. The term is applied popularly not only to a special session called after sine die adjournment of a regular annual session of Congress, but also to any portion of such a regular session held when Congress returns after the election.

From the time the Twentieth Amendment took effect through 1980, a Congress met after the election of its successor in nine instances. In each case the post-election session constituted an extension of the regular annual session of Congress, rather than a separate special session following a sine die adjournment. From 1939 through 1954, "lame duck" sessions occured in six of eight Congresses, but thereafter none were held until the beginning of the 1970s. In the earliest cases, Congress continued meeting throughout the campaign and election period, but since then, Congress has usually taken a recess of several weeks between the earlier and "lame duck" portions of the session. In recent years, correspondingly, the post-election portion of the session has been increasingly regarded as a distinct "lame duck session" and as a special occurrence, whereas in earlier years it was more commonly spoken of simply as a portion of an extended regular session.

Following are brief descriptions of each of the nine "lame duck" sessions since 1933. These summaries are drawn primarily from accounts in the Congressional Quarterly Weekly Report for the periods in question, and, for instances before that publication's inception in 1945, from the Sunday "News of the Week in Review" of the New York Times. These sources were supplemented, where necessary, by information from the weekly newsmagazines, memoirs, and the Congressional Record.

76TH CONGRESS, 3D SESSION--1940-1941

After adjournment of its first session in 1939, the 76th Congress was called into special session by President Roosevelt to deal with the threat of war in Europe. Thus, the annual session that began on January 3, 1940, was

actually the third of the 76th Congress. It, too, was dominated by the international situation. The President requested the largest peacetime defense program to that point in American history, and by the end of the summer, Congress had enacted $13 billion in defense authorizations and appropriations, a draft, income tax revisions, an excess profits tax, and related measures.

In June, in July, and again in September, the President offered the view that Congress need not remain in session any longer. Some congressional leaders, however, held that Congress should "stand by" in session, in case of emergency. Congress met regularly through mid-October, then limited itself to two or three meetings per week until January 3, 1941; there was no extended recess for the November 1940 elections. The session thus became the longest to take place to that point.

During the "lame duck" period, little was undertaken; the Record from November 4, 1940, through January 3, 1941, covers fewer than 500 pages, and quorums were often hard to raise. The Administration declined to send major new proposals (such as for a defense production board, aid to Britain, new taxes and a rise in the debt limit) to the Hill until the new Congress convened. Work also was impeded because both the House and Senate were meeting in substitute quarters while their chambers underwent urgently needed repairs. Among the more notable actions of the "lame duck" period were the decision to sustain the veto of a measure to limit regulatory agency powers, and the publication of a committee report on sabotage of the defense effort.

77TH CONGRESS, 2D SESSION--1942

The wartime year of 1942 again saw Congress remaining in session continuously through the election, adjourning sine die on December 16. A normal schedule of daily meetings was in general followed throughout the period, except during a brief period near the election, when Congress met every third day.

The knowledge that the 78th Congress, to begin in January, would contain a much narrowed Democratic majority undoubtedly affected action in the "lame duck" portion of the 77th Congress. Congress declined to take final action to approve the Third War Powers Bill or the expansion of the Reconstruction Finance Corporation, including an agricultural parity rider attached to the latter. Other questions which were left to the next Congress included comprehensive national service legislation, general ceilings on net personal income, a bill to

curb the powers of regulatory agencies, and plans for censorship of communications with U.S. territories. A bill to abolish the poll tax passed the House, but fell to a filibuster in the Senate.

Congress did pass legislation during the lame duck period to adjust inequities in overtime pay for Government workers, and to provide for the draft of 18- and 19-year olds (although the Congress deferred deciding whether to require them to receive a full year's training before being sent into combat).

By mid-December, quorums had become difficult to obtain and leaders of both parties agreed that nothing further could be brought before Congress until January, when the 78th Congress was to convene.

78TH CONGRESS, 2D SESSION--1944

In 1944, another wartime year, Congress recessed its session for the national party conventions and again for the elections. The latter recess began on September 21; Congress returned on November 14 and remained in session until December 19. Accordingly, this year's schedule offers the first instance of an separate and distinct "lame duck session" after the Twentieth Amendment went into effect.

Among the salient issues facing the post-election session were the questions of peacetime universal military training, extension of the War Powers Act and of the reciprocal trade system, a scheduled increase in Social Security taxes, and a rivers and harbors appropriation bill. Several congressional reform questions were also actively discussed, including restructuring of the committee system and increased congressional pay. A number of renewals of domestic programs and proposals for post-war reconstruction were also mentioned as possible subjects for action.

In the end, several questions were deferred until the following Congress, including universal military training, the Bretton Woods monetary agreements, the Reciprocal Trade Act, and restructuring of the Social Security system. Several other measures could not be brought to final action, including the rivers and harbors bill, a Senate-passed bill for congressional reform, and a pay increase for postal workers. However, a bill delaying the Social Security tax increase was enacted, as was a renewal of the War Powers Act and an increase of the congressional clerk-hire allowance by $3,000, to $9,500. In addition,

the Senate confirmed the nomination of Edward Stettinus as Secretary of State and acted on the nominations of a number of his subordinates.

80TH CONGRESS, 2D SESSION--1948

Prior to adjourning the special session of Congress called by President Truman in the summer of 1948, Congress approved a resolution requiring the House and Senate to reconvene on December 31, 1948, unless called back before that date by the congressional leadership. Since the leadership did not exercise that option, Congress was thus required to meet on December 31 to attend to formalities needed to conclude the business of the 80th Congress. This session--certainly one of the shortest "lame duck" sessions on record--met for just under an hour and a half, at which time both houses adjourned sine die.

During the brief session, both Houses approved a measure extending for 60 days the life of the (Hoover) Commission on Organization of the Executive Branch of Government. The Senate also extended for 30 days the life of the Special Small Business Committee, and both houses swore in new Members.

81ST CONGRESS, 2D SESSION--1950-1951

With the Korean War at a critical juncture in the fall of 1950, congressional leaders announced in late September that Congress would reconvene in late November and until then would be available for earlier meetings should the President believe it necessary to call an emergency session. The leadership announced that the post-election session would also include consideration of an excess-profits tax, statehood for Alaska and Hawaii, and a new rent control bill.

As the "lame duck" session convened, General MacArthur warned the Congress that the United Nations faced "an entirely new" war in Korea, and that conflict dominated congressional attention through the session. Furthermore, President Truman presented congressional leaders with a list of thirteen proposals, including five he described as of "greatest urgency." The five included the three major measures the leadership had proposed plus supplemental appropriations for defense and atomic energy and aid for Yugoslavia.

Congress stayed in session through the New Year. It approved an extension of rent control and President Truman's $38 million famine relief bill for

Yugoslavia. In the week before the Christmas holidays, it completed work on the $18 billion defense appropriation bill supported by the President, the Administration-requested excess profits tax, and a far-ranging civil defense program.

Efforts to obtain a vote on statehood for Alaska were abandoned after a week of intermittent Senate debate on a motion to take up the measure failed to produce a vote.

83D CONGRESS, 2D SESSION—1954

Prior to the 1954 congressional elections, the House adjourned sine die, but the Senate reconvened on November 8 for the sole purpose of considering the recommendation of a select committee that Senator Joseph R. McCarthy (R-Wisc.) be censured for improprieties committed in the course of his investigations into possible Communist influence in high Government offices. Senator McCarthy's allegations eventually had led to investigations of McCarthy himself, and the Senate had assigned the issue to a select committee chaired by Senator Arthur V. Watkins (R-Utah).

The select committee introduced its censure resolution on November 9. The first count of the two-count resolution was approved on December 1 and final action was completed the following day.

While the Senate was debating the censure resolution, two tangential matters also became Senate issues. First, Senator McCarthy continued to press for a further investigation of Major Irving Peress, who had relied on the Fifth Amendment in refusing to answer questions before McCarthy's subcommittee. Second, following the Senate censure, Senator McCarthy criticized President Eisenhower at a meeting of the Permanent Investigations Subcommittee. McCarthy read a statement saying that he felt the need to "apologize" to the voters for an "unintentional deception" in 1952 when he campaigned for Eisenhower.

Press reports speculated that the Senate might consider matters other than the McCarthy censure resolution, including a number of pending treaties and nominations; but the Senate took action only on the McCarthy censure resolution and adjourned finally on December 2.

91ST CONGRESS, 2D SESSION--1970-1971

Congressional leaders reluctantly called a post-election session for the first time in almost twenty years to complete action on a long list of major legislation including electoral reform, the Family Assistance Plan (the Nixon Administration's principal welfare reform proposal), occupational safety and health, equal rights for women, manpower training, and funds for the supersonic transport plane (SST). Seven regular appropriation bills also remained to be enacted.

Congress stayed in session until January 2, 1971, less than 24 hours before the constitutional deadline of noon on January 3, when the 92d Congress was convened. It kept largely to the agenda the congressional leadership had set before adjournment in October but failed to approve many Administration proposals, including the Family Assistance Plan which, with other controversial measures, had been attached to a Social Security bill in the Senate. The SST received only interim funding. President Nixon strongly criticized what he termed "major failures" of the "lame duck" session.

Congress did complete work on two of the seven regular appropriation bills and a measure dealing with foreign aid and foreign military sales, including a repeal of the Tonkin Gulf resolution. It also passed the Clean Air Amendments Act of 1970 which established specific deadlines for a 90-percent reduction of certain pollutants from new automobiles, and a major housing bill which included a new program of Federal crime insurance and created the Community Development Corporation.

President Nixon vetoed four measures during the "lame duck" session, including a $9.5 billion Federal manpower training and public service employment bill.

93D CONGRESS, 2D SESSION--1974

Delayed in the consideration of major legislation by the extraordinary events of 1973 and 1974--the Watergate investigations, the resignation of Richard M. Nixon and the succession of Gerald R. Ford to the Presidency--Congress reconvened in mid-November 1974, in an effort to clear a long list of crucial items.

Although congressional leaders had indicated that only the most critical bills would be considered--including votes on the approval of Nelson Rockefeller

as Vice-President--President Ford greeted the returning Congress with a ten-page list of legislation he wanted passed before the session expired. In the end, Congress did consider a wide range of issues before it adjourned on December 20, 1974, but its actions were not always to President Ford's liking.

The Rockefeller nomination was approved by mid-December, but Congress handed the President a major setback when it overrode vetoes of both a vocational rehabilitation bill and a measure amending the Freedom of Information Act. Congress also approved--and the President finally signed--a bill that nullified a prior agreement giving former President Nixon control over the tapes and papers of his Administration.

In other action:

--Congress approved a long-delayed trade reform bill giving the President broad authority to negotiate trade agreements, act on trade barriers and provide import relief to workers, industries and communities;

--Congress established a Federal policy for research and development of non-nuclear sources of energy; and

--Congress cleared legislation making continuing appropriations for Federal agencies whose regular appropriations had not been enacted.

96TH CONGRESS, 2D SESSION--1980

Some observers contended that postponing final congressional action on a lengthy agenda of major issues until a post-election session would accomplish two goals: first, it would delay potentially difficult pre-election votes on budget matters, and second, it would allow incumbents extra time to campaign. However, the large Republican gains on election day were thought to complicate the prospects for a productive "lame duck" program, especially with such important issues as budget reconciliation, several major appropriation bills and landmark environmental legislation still left for consideration.

In fact, the "lame duck" session (between November 12 and December 16) was productive, as Congress completed action on many of the issues that had been held in abeyance until after the elections:

--a budget resolution and a budget reconciliation measure were approved;

--five regular appropriation bills were cleared, although one was subsequently vetoed. A second continuing resolution was approved to continue funding for other parts of the government;

--the Alaska lands bill and a "superfund" bill to help clean up chemical contamination were approved;

--a measure extending general revenue sharing for three years was approved;

--Congress cleared a measure that made disposal of low-level nuclear waste a State responsibility; and

--Congress changed military pay and benefits and gave the President the authority to call 100,000 military reservists to active duty without declaring a national emergency.

RB;RS:db

OTHER NATIONS

Senator PELL. It is worth noting that most other democratic nations in the world manage a more prompt installation of newly elected governments than does the United States. I recognize, of course, that there are institutional differences in governments that in some cases make a prompt transition easier. Parliamentary governments, for example, are better able to effect a speedy change in government.

Nevertheless, I believe the transition practices of other governments indicate that a speedier installation of governments is both possible and widely practiced. At my request, the Library of Congress compiled a summary of transition practices in democratic governments of the world.

I submit a copy of that summary to the subcommittee.

Senator HATCH. Without objection.

[The following was received for the record:]

TIME SPAN BETWEEN ELECTION OR SELECTION OF AN OFFICIAL AND THE SUBSEQUENT TAKING OF OFFICE IN VARIOUS FOREIGN COUNTRIES

Prepared by Members of the Staff

October 1983

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TIME SPAN BETWEEN ELECTION OR SELECTION OF AN OFFICIAL AND THE SUBSEQUENT TAKING OF OFFICE IN VARIOUS FOREIGN COUNTRIES

Australia
Austria
Belgium
Burma
Canada
Caribbean (English-Speaking)
China, Republic of (Taiwan)
Costa Rica
Ecuador
France
Gabon
Germany, Federal Republic of
Great Britain
Greece
India
Indonesia
Iran
Ireland, Republic of
Italy
Japan
Kenya
Korea, Republic of Korea (South Korea)
Malaysia
Mexico
Netherlands
New Zealand
Nigeria
Rwanda
Scandinavia
Senegal
Sierra Leone
South Africa
Spain
Switzerland
Thailand
Turkey
Venezuela
Zambia
Zimbabwe

AUSTRALIA

A change in government appears to be effected in Australia very quickly following its election. Thus, after the most recent general election held on March 5, 1983, the defeated Prime Minister resigned the next day and the new Prine Minister was sworn in on March 11, 1983.

There are certain constitutional and statutory time limitations imposed between the dissolution of the House of Representatives and the meeting of a new Parliament after a general election. When the House is dissolved the writs for a general election must be issued within ten days,[1] and the writs must be returned not more than ninety days after they are issued.[2] A new Parliament must meet not later than thirty days after the date appointed for the return of the writs.[3]

The following table shows the sequence of events during the 1980 general election:

House of Representatives dissolved	September 9, 1980
Writs issued	September 9, 1980
Nominations closed	September 27, 1980
Election date	October 18, 1980
Parliament reopened	October 25, 1980[4]

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October 1983

1/ Commonwealth of Australia Constitution Act, 63 & 64 Vict., ch. 12, as amended, § .

2/ Commonwealth Electoral Act, 1918, as amended, § 65.

3/ Commonwealth of Australia Constitution Act, 63 & 64 Vict., ch. 12, as amended, § 5.

4/ Australia. Parliament, House of Representatives Practice 131 (1981).

AUSTRIA

In Austria, the titular head of state is the President of the Republic. He is elected every six years by popular vote, and after the election, he must be affirmed by a joint session of both chambers of the federal legislature without delay. 1/

Despite the institution of the presidency, Austria is in fact a parliamentary democracy, in that the cabinet is formed by the party (or coalition of parties) with a majority in the National Council. 2/ The cabinet is chaired by the Federal Chancellor, and he and the other ministers are formally appointed by the President of the Republic.

Elections for the National Council must take place every four years, and the Constitution mandates that the new National Council convene within thirty days of the election. 3/ No time limits for the appointment of the new Chancellor and other cabinet members are provided by law. Usually, it takes three to four weeks from the time of the election for the National Council to convene, and the new cabinet is appointed within another two or four weeks.

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1/ Art. 64, para. 4, Bundes-Verfassungsgesetz [B-VG] vom 1. Oktober 1920, Bundesgesetzblatt [official law gazette of Austria] No. 1/1920, as amended.

2/ Representative chamber of the bicameral Austrian legislature.

3/ Art. 27, para. 2, B-VG.

BELGIUM

The king dissolves parliament at the request of the government. The decree dissolving it must set the date for elections within 40 days, and that for the meeting of the newly elected parliament within 60 days from the date of that decree. 1/ As soon as the results of the elections are known, the king begins consultations with the political parties so that he can appoint a new prime minister who would be likely to form a government which could obtain a vote of confidence in the newly elected parliament. During this period the outgoing government is in a state of demission and is concerned only with current business. The interval provided between the elections and the taking of office of the new government is thus a maximum of 20 days. The newly appointed prime minister and his government present themselves in parliament for a vote of confidence as soon as practicable. 2/

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1/ Constitution of Belgium, Art. 71, J. Servais and E. Mechelynck, comps., 3 Les Codes Belges 15 (Bruxelles, Bruylant, 1982).

2/ Herman Van Impe, Le régime parlementaire en Belgique 127-128 (Bruxelles, Bruylant, 1968).

BURMA

Under Article 44 of the 1974 Constitution, legislative power is to be exercised by the People's Assembly or Pyithu Hluttaw alone. 1/ This is a unicameral body, consisting of representatives elected for a term of four years. Under the provisions of Articles 66 and 67, the Chairman of the Council of State is to be the President of the Republic, and the Council of State is elected from among its own members by the Pyithu Hluttaw, according to Article 64. 2/

The four-year term of the Pyithu Hluttaw established under the 1974 Constitution, whose members were elected in 1974, expired in March 1978. Elections were held in January 1978, with polling taking place over a period of 15 days, and the new Pyithu Hluttaw met on March 2, 1978, to elect the Chairman of the Council of State. 3/ The time interval between the election of the representatives and their taking office was therefore about two and a half months in 1978.

1/ The Constitution (Fundamental Law) of the Socialist Republic of the Union of Burma 14 (Washington, D.C., Law Library, Library of Congress, 1975).

2/ Id. at 19.

3/ Asia 1979 Yearbook 155 (Hong Kong, Far Eastern Economic Review, 1979).

Although the next four-year term of the Pyithu Hluttaw was not due to expire until March 1982, the term of the preceding (1978-1982) Pyithu Hluttaw was reduced and new elections were held in October 1981. The new government was installed in November 1981. 4/ One justification was that this would enable the Central Organs of Power to be formed in advance, before March 1982 when the first session of the new Pyithu Hluttaw would convene. 5/

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4/ Asia 1983 Yearbook 123 (Hong Kong, Far Eastern Economic Review, 1983).

5/ The Working People's Daily, Rangoon, March 17, 1981, p. 5.

CANADA

Following a general election in Canada, the successful candidates in the 282 electoral districts in the country are summoned to Ottawa by the Governor General to sign the roll, take the oath of office, and assume their seats in the New Parliament.[1/] The Governor General, who is the Queen's representative in the country, exercises his royal prerogative of calling Parliament (which is composed of the House of Commons and the non-elected, largely honorary Senate) to session upon the advice of the individual he has appointed to be the prime minister. There is no fixed or established date for the summoning of Parliament, but this must be done within twelve months since the Constitution Act provides that Parliament must meet at least once a year.[2/] New prime ministers generally choose to delay the opening of Parliament for several months to give themselves a transition period. Former Prime Minister Clark took office shortly after the general election on May 22, 1979, and did not convene Parliament until October 9 of that year.[3/] This delay was widely criticized by the opposition parties for being untraditionally long and when Prime Minister Trudeau returned to office immediately after the general election of February 18, 1980, he called Parliament into session only six weeks later on April 14 of that year.[4/]

1/ R. Dawson, The Government of Canada 344-345 (5th ed. 1970).

2/ 30 & 31 Vict. ch. 3, § 20.

3/ XIV Ottawa Letter 265 (Oct. 9, 1979).

4/ XIV Ottawa Letter 469 (Apr. 14, 1980).

When a general election is called in Canada, the House of Commons is dissolved and ceases to exist. During the election period, the prime minister and his cabinet continue to govern the country. If the prime minister is unable to form a majority or minority government following the election, he will in accordance with convention resign immediately. If the outcome is in doubt, the prime minister may remain in office until Parliament is called and the issue resolved. 5/ Upon receipt of the prime minister's resignation, the Governor General will choose the leader of the new majority party or of a minority party who is supported by the majority of the House of Commons to be the new prime minister. After the last two elections, the prime ministers were both officially sworn in thirteen days later. In a crisis, or if either leader wished to speed up the transition, he could call on the Governor General at any earlier time following the return of the election results.

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5/ P. Hogg, Constitutional Law of Canada 155 (1977).

THE ENGLISH-SPEAKING CARIBBEAN

The independent, English-speaking, and democratic states in the Caribbean region (which include Antiqua, the Bahamas, Barbados, Belize, Dominica, Guyana, Jamaica, St. Christopher-Nevis, St. Lucia, St. Vincent and Trinidad and Tobago) all have parliamentary forms of government since they were all at one time colonies of the United Kingdom. In all of these countries, a prime minister who has been defeated in a general election is expected to follow the convention of resigning immediately. If a defeated prime minister fails to do so, he may be dismissed by the titular head of government (The Governor General or president). The new prime minister is sworn into office after a very brief interval which generally does not exceed two weeks and is then responsible for advising the titular head as to when Parliament should be summoned. New members of Parliament are sworn in at the opening session.

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REPUBLIC OF CHINA (TAIWAN)

According to Article 65 of the Constitution, which was promulgated on January 1, 1947 and came into force on December 25 of the same year, members of the legislature, the General Assembly, are elected for terms of three years. Elections must be held within the three months before a term expires. Thus, the greatest possible interval between election and assumption of office is three months.

The President and the Vice-President are elected by the legislature for six-year terms. Article 29 of the Constitution specifies that the General Assembly shall meet for the purpose of this election within the 90 days before the incumbents' terms expire. Articles 50 and 51 provide that if a President has not been elected by the expiration date or if he has not assumed office, the Premier can act as President for up to three months.

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COSTA RICA

Under Article 133 of the Constitution of Costa Rica, [1] the election of the President and the Vice President must be conducted the first Sunday of February of the year in which a presidential term begins. Presidential terms last 4 years. [2] The taking of office of the new elected officials is also determined by the Constitution, which establishes the 8th of May as the date of inauguration. [3] The interval between election and the taking of office, therefore, is 3 months.

The Legislative Assembly must convene on the 1st of May, according to Article 116 of the Constitution. The deputies' term is also 4 years. [4]

The Electoral Code [5] article 98, provides that the election of the President, Vice President, Deputies of the Legislative Assembly, and municipal officials must be conducted every 4 years on the 1st Sunday of February in the same general electoral process.

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[1] La Gaceta October 6, 19 and 20, 1949.

[2] Id. Art. 134.

[3] Id. Art. 136

[4] Id. Art. 107.

[5] Ley No. 1536 La Gaceta January 14, 1953, amended.

ECUADOR

The Law on Elections, as amended, [1] provides that the President and the Vice President and all municipal officials must be elected every 5 years in elections to be performed the 1st Sunday of January. The second election of President and Vice President (when an absolute majority has not been obtained by the candidates) must be conducted simultaneously with the election of the members of the National Chamber of Representatives -- also elected every five years -- on the 1st Sunday in May. [2] The National Chamber of Representatives convenes on August 10, according to the Constitution. [3] There is, therefore, a 3-month interval between the election of the representatives and their taking of office. In regard to the inauguration of office of the President and Vice President, no specific date is established. In any event the President and the Vice President must be sworn into office by the National Chamber of Representatives within the 60 days it is in session. [4]

In conclusion, under Ecuadorian law, the interval between election and taking of office of members of parliament is 3 months. For the office of President and Vice President, the interval will depend on facts such as the

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[1] Registro Oficial (R. O.) of February 27, 1978 and Law No. 84 of February 5, 1982, R. O. February 10, 1982.

[2] Id. art. 45.

[3] Constitution of December 7, 1977, R. O. March 27, 1979 Art. 59.

[4] Id. Art. 59 b.

achievement of majority in the first or second election and the date in which both are sworn in by the National Assembly of Representatives, an event which may take place only after the Assembly convenes in August.

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FRANCE

A. Deputies

1) The interval of time between general elections and the subsequent taking of office is within sixty days before the normal end of the term of five years. 1/

2) In a case where the National Assembly has been dissolved, general elections must take place within 20-40 days after the decree of dissolution. 2/

B. Senators

Senators are elected for nine years and each election replaces a third of their number. The election of senators takes place within sixty days preceeding the beginning of their term of office. 3/ The Senate cannot be dissolved.

C. President of the Republic

According to Article 6 of the Constitution of the 5th Republic, the President is elected for 7 years by direct, universal suffrage. 4/ According to Article 7, the election of the new President shall take place

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1/ Code electoral LO. 112 in Code administratif 718 (Paris, Dalloz, 1979).

2/ Marcel Prélot, Institutions politiques et droit constitutionnel 735 (Paris, Dalloz, 1975).

3/ Supra note 1, LO. 278, p. 743.

4/ Constitution et pouvoirs public in Code administratif 2 (Paris, Dalloz, 1979).

no less than 20 days and no more than 35 days before the term of the President in office expires. 5/ In case of vacancy or incapacity, the election must take place no less than 20 and no more than 35 days. 6/

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5/ Id.

6/ Id.

GABON

The newly elected members of the National Assembly of Gabon take office on the 1st working day following the 15th day after their election (article 31).[1/] No material was found on the time between general elections and the president's taking of office.

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1/ "Gabon," in A. P. Blaustein, comp. Constitutions of the Countries of the World (Dobbs Ferry, New York, Oceana Publications, 1971-) (looseleaf).

FEDERAL REPUBLIC OF GERMANY

The rules pertaining to the election of the members of the Federal Diet (Bundestag) as well as of the Federal President are included in the Basic Law for the Federal Republic of Germany. 1/

Article 39 (2) states that the Federal Diet "shall assemble at the latest on the thirtieth day after the election."

The Federal President is elected by the Federal Convention which consists of the members of the Federal Diet and an equal number of representatives of the Laender elected by the diets of the Laender according to the principle of proportionate representation. 2/ The Federal Convention must convene no later than thirty days before the expiration of the term of the Federal President in office, or if the office of the President becomes vacant before the expiration of the President's term of office, no later than thirty days after the vacancy occurred. 3/

The newly elected Federal President takes the oath of office and enters his office on the day on which his predecessor's term expires or, if the vacancy occurred earlier, on the day of his election.

1/ The Basic Law for the Federal Republic of Germany of May 23, 1949, Bundesgesetzblatt [Official Gazette of the Federal Republic of Germany], p. 1, as amended. An English text of the Basic Law, which is generally known as the Bonn Constitution, is published in The Basic Law of the Federal Republic of Germany (Wiesbaden, 1979).

2/ Id. Art. 54 (1) and (3).

3/ Id. Art. 54 (4).

If the expiration of the Federal President's term of office, or the premature termination of his term occurs at a time when the legislative term of the Federal Diet has expired, the thirty-day period for the convening of the Federal Convention shall begin with the assembly of the newly elected Federal Diet. 4/

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4/ Id. Art. 54 (5).

GREAT BRITAIN

There is no written rule governing the time that is permitted to elapse between a general election and the appointment of a new government. In practice, the transition is handled with speed. According to one authority, the change in government should be effected within a week,[1] but there is no set time limit so long as an unnecessary delay is not incurred.

As soon as the results of a general election are known, the defeated government resigns and the Queen as sovereign appoints as Prime Minister the leader of the party which has gained the majority of seats in Parliament. In the present century, the Queen has appointed a new Prime Minister on the same day that the previous one resigned.[2]

The timing can be judged from the quick succession of events, following the last general election. After Mrs. Thatcher was reelected on June 9, 1983, she announced changes in her cabinet on June 12 and a new session of Parliament opened on June 22, 1983.

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1/ A. Todd, I Parliamentary Government in England 296 (1892).

2/ 8 Halsbury's Laws of England, Constitutional Law, para. 1115 (1974).

GREECE

According to Article 53 of the Constitution of 1975,[1] when the parliamentary term has expired general elections must be held within 30 days and the new parliament must be convoked in a general assembly within the next 30 days. These changes in the government are decreed by the president and countersigned by the Council of Ministers.

The executive power is exercised by the President of the Republic and the Government. The government consists of the Cabinet which is composed of the Prime Minister and the Ministers. The Council of Ministers and the Prime Minister are the main executive organs of the State. [2] The Prime Minister is appointed by the President of the Republic. Within 15 days after the Prime Minister has been sworn in, the Government is obliged to request a vote of confidence from the Parliament.

The President of the Republic who is elected by the Parliament enters office on the day following the expiration of the term of the former President or, in all other cases, on the day following his election. [3]

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1/ A. Manesis and G. Papademetriou, To Syntagma Tou 1975 [The Constitution of 1975] 88 (Athens, 1976).

2/ A. Derbenagas, To Syntagma Tēs Ellados [The Constitution of Greece] 323 (Athens, 1976).

3/ Supra note 1, at 76.

INDIA

The executive power of the Union of India is vested in the President. The term of his office is five years.[1] General elections to the parliamentary House of the People have to be conducted once in five years.[2] Upon completion and declaration of the result of the Presidential election, the President assumes office immediately.

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1/ India Const. arts. 53 and 56.

2/ Id. art. 83.

INDONESIA

Indonesia's current Constitution, the Constitution of 1945, which was abrogated in 1949 and reinstated in 1959, provides for a People's Consultative Assembly. The Assembly is composed of members of Parliament, plus representatives of regional territories and other groups, under Article 1 of the Constitution. 1/ The President is the Chief Executive and holds office for a term of five years. He is elected by the People's Consultative Assembly, according to Article 6 of the Constitution. 2/

In 1971, elections for 360 members of the Parliament, the other 100 members being appointed by the President, were held on July 5, and the new Parliament was installed on October 28. 3/ The time interval between the election of the officials and their taking office was just under four months.

In 1982, elections were held on May 4, and the new members of the Parliament are stated as having been installed "in early October" of the same year. 4/ This time, the time interval betrween election and taking office was about five months.

1/ Albert P. Blaustein and Gisbert H. Flanz, ed., VIII Constitutions of the Countries of the World: Indonesia 6 (Dobbs Ferry, N.Y., Oceana Press, 1973).

2/ Id. at 7.

3/ Id. at 16-17.

4/ Asia 1983 Yearbook 161 (Hong Kong, Far Eastern Economic Review, 1983).

Presidential elections were held on March 22, 1978, and the President apparently took office immediately, as his new Cabinet was announced one week later, on March 29, 1978. 5/

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5/ Asia 1979 Yearbook 203 (Hong Kong, Far Eastern Economic Review, 1979).

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IRAN

Regarding the election of representatives to the National Assembly, Principle 63 of the Constitution of the Islamic Republic of Iran (1979)[1] states:

> The term of election to the National Assembly is four years. Elections for each term must be held before the end of the previous term in such a manner that the country is at no time without a House.

No date is specified in the Constitution of Iran for the president's taking of office.

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1/ Majmuah-i Qavanin-i Sali 1358 [Compilation of Laws of the Year 1979-80] 329 (Tehran, 1980) [in Persian].

REPUBLIC OF IRELAND

The Constitution of Ireland, art. 13, requires that the President of Ireland, the formal head of state, appoints the Taoiseach (Prime Minister) on the nomination of the Dáil Eireann (a popularly elected legislative Chamber of Deputies). The same provision also requires that the President appoints the other members of the government on the nomination of the Taoiseach with the previous approval of the Dáil. The requirement of approval by the Dáil means that the inauguration of the new government is tied to the beginning of a new Dáil session.

Upon dissolution of the Dáil for a general election, art. 16 of the Constitution provides that the election must take place no later than thirty days afterwards and that the newly elected Dáil meets within thirty days of the date of election. When the session begins, the new Dáil nominates the leader of the majority party or coalition to be Taoiseach after a short and usually ritualistic debate.[1/] The Dáil then adjourns for a few hours while the Taoiseach calls upon the President for formal appointment to the office. On his return to the Dáil, the remaining members of his government are approved en bloc.[2/]

1/ B. Chubb, The Government and Politics of Ireland, 183 (1982).

2/ Id. at 184.

Republic of Ireland

The most recent general election was held on November 24, 1982, at which none of the parties succeeded in gaining a clear majority. On December 12, 1982, an agreement to form a coalition government was reached between the Fine Gael Party and the Labor Party. The leader of Fine Gael, Dr. Garret Fitzgerald, became Prime Minister when the Dáil met on December 14, 1982.

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ITALY

Article 61 of the Constitution provides that elections of the Chambers of the Italian Parliament must take place within 70 days of the dissolution of a preceding Parliament. While a maximum time period is established between dissolution and elections, neither the Constitution nor the law sets a minimum time period which must pass before an election. However, since the parties or groups presenting candidates have much to do before the actual election campaigns, which last 30 days, it is unlikely that elections would be held any sooner than about two months after the end of the previous legislature. Once elected, the Chambers must hold their first session within 20 days, with the old Chambers remaining in power until this session begins.

The chief executive of the government is the President of the Council of Ministers who is appointed, along with the ministers he chooses, by the President of the Republic. The Council is also known as the Government or the Cabinet. The Council and its President assume office upon taking the oath before the President of the Republic, and they must have the confidence of the two Chambers. The only time limit the Constitution introduces is that the Council must present itself to the Chambers for the vote of confidence within 10 days of its formation. The Constitution, however, sets no time limit for the formation of the Government which in reality may be a lengthy process involving long negotiations and complex agreements among the various political parties participating in the government coalition.

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JAPAN

The term of office of members of the lower house of the Diet is four years, but it may be terminated before the expiration date when the lower house is dissolved (general election). 1/ A general election of members is usually held within the 30 days before the date on which the term of office of the incumbent members expires. If the lower house is dissolved, the government must call a general election within 40 days. 2/

The term of office of members of the lower house begins from the date of the general election and it runs until the date of the next general election. However, the term of office of members elected as a result of a dissolution commences from the next day, on which the term of the predecessors expires. 3/

The term of office of members of the upper house is six years and election for half of the members takes place every three years (ordinary election). 4/ The ordinary election is in principle held within the 30 days before the date on which the term of office of the predecessors is scheduled to expire. 5/ The term of office of members of the upper house begins from

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1/ Art. 45, Constitution, Nov. 3, 1946; came into force on May 3, 1947.

2/ Art. 31, Public Office Election Law, Law No. 100, April 15, 1950, as last amended by Law No. 81, August 8, 1982.

3/ Id., Art. 256.

4/ Supra note 1, Art. 46.

5/ Supra note 2, Art. 32.

the next day, on which the term of the predecessors expires. An exception to this is that if the ordinary election is held after the expiration date, the term of office begins from the date of the ordinary election. 6/

The Prime Minister is designated by both houses of the Diet; this designation is the initial order of business after the Diet is organized following a general election. On the same day, the Emperor formally appoints the Prime Minister, whose term begins immediately. 7/

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6/ Id., Art. 257.

7/ Supra note 1, Art. 67.

KENYA

According to section 7 of the Constitution of Kenya of 1969, as amended,[1/] the person elected to the presidency assumes the duties of the president as soon as he is declared elected to that office. Members of Parliament also assume office on being elected or appointed, according to the provisions of section 49 of the Kenyan Constitution.

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1/ 1 Laws of Kenya (1969) (Supp. 1979); see also, "Kenya," in A. P. Blaustein, 1921-, comp. Constitutions of the Countries of the World (Dobbs Ferry, New York, Oceana Publications, 1971-) (looseleaf).

REPUBLIC OF KOREA (SOUTH KOREA)

The general election of new members of the National Assembly, the single-chamber legislature, is usually held within 20 to 180 days before the expiration date of the four-year term of the incumbent members. If the National Assembly is dissolved, the general election must be held within 90 days but not less than 30 days from the date of its dissolution. 1/ The term of the new members begins from the day after the expiration date of the term of their predecessors. The term of the new members elected after the dissolution of the National Assembly commences from the first day of the new session of the Assembly. 2/

The President is elected by the Presidential Electoral College to serve a seven-year term. At least 30 days before the term of office of the incumbent president expires, the Electoral College must elect a successor. 3/ The term of office of the new President begins from the day he was elected. 4/

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1/ Art. 96, Law Concerning the Election of Members of the National Assembly, Law No. 3359, January 29, 1981.

2/ Id., Art. 7.

3/ Art. 43 and 45, Constitution, July 12, 1948, as last amended Oct. 27, 1980.

4/ Id., Supplementary Provisions, Art. 8, para. 2.

MALAYSIA

The legislative authority of Malaysia's government is vested in a Parliament consisting of the the Yang di-Pertuan Agong, who is the head of state, and two Majlis, or Houses of Parliament, the Dewan Negara or Senate and the Dewan Rakyat or House of Representatives, according to Article 44 of the Federal Constitution of 1957. 1/ The Senate consists of both elected and appointed members; the House of Representatives consists of elected members only.

The Yang di-Pertuan Agong is empowered by the Constitution to dissolve Parliament. Parliament, unless sooner dissolved, continues for five years from the date of its first meeting, and then stands dissolved. Whenever Parliament is dissolved, Article 55 provides that a general election is to be held within 60 days in the nine Peninsular States of Malaysia, and 90 days in Sabah and Sarawak, and the Parliament shall be summoned to meet on a date not later than 120 days from that date. 2/

The maximum interval of time that can elapse between the election of members of either House of Parliament and the taking of office is therefore 120 days.

1/ Albert P. Blaustein and Gisbert H. Flanz, ed., X Constitutions of the Countries of the World: Malaysia 16 (Dobbs Ferry, N. Y., Oceana Press, 1980).

2/ Id. at 17.

The Yang di-Pertuan Agong, or Supreme Head, is elected by the Conference of Rulers for a term of five years, according to Article 32 of the Constitution. The Conference of Rulers consists of the Rulers or other heads of each state in the Federation, and a principle of rotation is followed in the election of the Supreme Head from among the heads of each state. It could not be ascertained what interval of time elapses between the election of the Yang di-Perutuan Agong and the day on which he takes office.

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MEXICO

Article 75 of the Federal Law on Political Organizations and Electoral Process of December 28, 1977 [1] states that the electoral process commences in October prior to the election and concludes in August of the year during which constitutional elections are held.

Under the provisions of Article 83 of the Constitution of Mexico of 1917, [2] the President assumes office on the first of December, for a term of 6 years.

Article 65 requires that the Congress meets on the first day of September of each year in regular session. The members of the Chamber of Deputies are elected every 3 years by Mexican citizens (Art. 51), and the Senators are directly elected every 6 years.

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[1] Diario Oficial December 30, 1977.

[2] Constitution of Mexico, 1917 (Washington, Organization of American States, 1972).

THE NETHERLANDS

In the Netherlands the members of the Second Chamber of the Dutch Parliament are directly elected through general elections. 1/ The Second Chamber is elected for four years. 2/ The Election Law 3/ implements the requirements set forth in the Constitution. Candidates must be nominated no later than the second Tuesday in April of the election year, 4/ and the election normally takes place 43 days after this day. 5/ The newly elected members of Parliament take office on the third Tuesday of September when the parliamentary year is officially opened by the Queen.

If for any reason the Chamber is dissolved by Royal Decree before the expiration of the 4-year term, new elections have to be held, and the newly elected Chamber has to convene within three months. 6/

The electoral system and the multi-party system mean that elections do not normally result in the emergence of a clear majority able to form a government. Often the government is based on a majority coalition. In the Netherlands the formation of a government is generally a long and complicated process. No time limit is set for this procedure. Once an agreement

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1/ Constitution of the Kingdom of the Netherlands, Royal Decree of February 17, 1983, Staatsblad [official law gazette of the Netherlands, Stb.] 70, art. 54.

2/ Id. art. 52.

3/ Law of July 13, 1951, Stb. 290, as amended.

4/ Id. art. F 1.

5/ Id. art. I 1.

6/ Supra note 1, art. 64.

has been reached, the process of forming a government is ended by the official appointment of the prime minister and the ministers through a Royal Decree. 7/

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NEW ZEALAND

New Zealand has a unicameral legislature with the House of Representatives being elected every three years unless it is dissolved in a shorter period by the Governor-General and a general election is called.[1/] The New Zealand Constitution provides that the House of Representatives shall be convened "at any place and time within New Zealand which the Governor shall from time to time by Proclamation for that purpose appoint."[2/] In practice, the Governor-General, who is appointed by the Queen, follows the instructions of the prime minister in calling the House of Representatives into session. During the opening day of Parliament, the members of the House of Representatives elected in the previous election are sworn into office. The last general election in New Zealand occurred on November 28, 1981 and the House was convened on April 7, 1982.[3/]

If a general election results in the defeat of the prime minister's party, he will resign in accordance with convention. The Governor-General is responsible for asking the leader of the new majority party or the party enjoying the support of the majority of the members of the House of Representatives to form a government. The transition period is usually very short. The present prime

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1/ The Electoral Act, [1975] 3 N.Z. Rep. Stat. 1897, § 12.

2/ New Zealand Constitution Act, 1857, 15 & 16 Vict., ch. 72, § 44.

3/ New Zealand Official Yearbook 1983, 872.

minister of New Zealand, Robert Muldoon, assumed office on December 12, 1975 after his party had won the majority of the seats in the House of Representatives on November 29 of that year. 4/

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4/ Id. at 869.

NIGERIA

Under the provisions of articles 127 and 129 of the Constitution of the Federal Republic of Nigeria of 1979, as amended,[1] the person elected to the presidency begins performing the responsibilities of the president on being elected to that office.[2] Members of the National Assembly, which consists of the Senate and the House of Representatives, also assume office on being elected to the National Assembly, according to article 70 of the 1979 Constitution.

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1/ Nigeria, The Constitution of the Federal Republic of Nigeria (Lagos, Federal Military Government, 1979), 120 p.; see also, "Nigeria," in A. P. Blaustein, 1921-, comp. Constitutions of the Countries of the World (Dobbs Ferry, New York, Oceana Publications, 1971-) (looseleaf).

RWANDA

In the first year of the legislature, the first regular session convenes by law eight days after the legislative elections (article 57) when the verification of the mandate of each member will take place (article 61).[1/] No material was found on the time between general elections and the taking of office by the president.

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1/ Constitution of Rwanda in 1 Codes et lois du Rwanda 9, eds., F. Reyntjens & J. Gorus (Butare, Universite Nationale du Rwanda, 1979).

SCANDINAVIAN COUNTRIES

Newly elected Scandinavian Parliaments take office about two weeks after the respective parliamentary election. The specific Danish time limit is 12 weekdays after the election, unless the King should decide to call in the newly elected Parliament earlier. 1/ The Swedish time limit is 15 days after the election, and not less than 4 days after the results of the election have been published. 2/ Norwegian parliamentary elections always take place in the month of September, 3/ and the newly elected Norwegian Parliament meets on the first weekday of October. 4/

Under the parliamentary form of government followed in Denmark, Norway, and Sweden, the party (or parties) that won the parliamentary election has the right to suggest who should be appointed prime minister. This suggestion has been followed for a long period of time, and the new prime minister will appoint all of his cabinet members (ministers) before the meeting of the newly elected Parliament takes place.

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1/ Danish Constitution, Art. 35.

2/ Swedish Instrument of Government Act, Ch. 3, Section 5.

3/ Norwegian Constitution, Art. 54.

4/ Id. Art. 68.

SENEGAL

The president takes office after the final proclamation of the election results and upon the expiration of the term of office of his predecessor. The incumbent president remains in office until the installation of his successor (article 30). 1/ No material was found regarding the time elapsing between general elections and the taking of office of other elected officials.

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1/ "Senegal," in A. P. Blaustein, comp. Constitutions of the Countries of the World (Dobbs Ferry, New York, Oceana Publications, 1971-) (looseleaf).

SIERRA LEONE

In Sierra Leone, the person elected to the office of the president assumes the responsibilities of the president on the day he is elected or upon the date that his predecessor's term of office expires, according to article 23 (6) of the Constitution of Sierra Leone of 1978, as amended.[1/] Members of Parliament also assume their responsibilities on being elected or appointed to Parliament, according to the provisions of articles 42-46 of the Constitution of Sierra Leone of 1978, as amended.

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1/ "Sierra Leone," in A. P. Blaustein, 1921-, comp. Constitutions of the Countries of the World (Dobbs Ferry, New York, Oceana Publications, 1971-) (looseleaf).

SOUTH AFRICA

In South Africa, members of the House of Assembly may take office the day after the polling day, which is chosen by the State President.[1/]

For the State President, from one month to three months may elapse before taking office, depending on the election day "fixed by the Speaker or (in his absence) the secretary to Parliament."[2/]

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1/ Subsecs. 40-41, 53 of The Constitution Act, No. 32 of 1961 in 8 Statutes of the Republic of South Africa Classified and Annotated from 1910-427-427 (c), 321, 433.

2/ Id., subsec. 8, at 415.

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SPAIN

Pursuant to the provisions of Royal Decree 3073 of December 29, 1978, 1/ general elections of Deputies and Senators were convoked in Spain in a democratic manner, for the first time after the death of General Francisco Franco. The election took place on March 1, 1979.

Article 66 of the Constitution of Spain of December 27, 1978 2/ provides that the General Cortes (i.e. Parliament) is formed by the Congress of Deputies and by the Senate.

Article 68.4 of the Constitution provides that the Congress is elected for 4 years and that the mandate to the deputies terminates 4 years after their election or the day the Congress of Deputies is dissolved.

Article 69.6 provides that the Senate is elected for 4 years and the Senator's mandate terminates 4 years after their election or the day the Senate is dissolved.

Article 68.6 of the Constitution requires that elections take place between 30 and 60 days after the termination of the mandate. The elected Congress must be convoked within the 20 days following the date of the holding of the elections.

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1/ Boletín Oficial, Jan. 1, 1979.

2/ B. O., Dec. 29. 1978

SWITZERLAND

There is no statutory provision concerning the time interval between the date of election and the convening of the Federal Assembly (the National Council and the Council of State). The same applies to the election of the Bundeskanzler (Chancellor of the Confederation).

By tradition, however, elections are always held in October, and the newly elected Federal Assembly convenes some time in January.

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THAILAND

Thailand has at present a parliamentary form of government with a House of Representatives whose members are elected by popular vote and a Senate whose members are appointed by the King of Thailand.

According to Article 99 of the current Thai Constitution, the Constitution of 1978, the term of the House of Representatives is four years from the date of the general elections. 1/ Article 100 provides that upon the expiration of the term of the House of Representatives, the King is to issue a Royal Decree calling for a general election, in which the election day must be fixed within 60 days of the date on which the term expires. Election day is to be the same day all over Thailand. 2/

Article 101 states that the King has the prerogative to dissolve the House of Representatives for a new election of members thereof. The dissolution of the House of Representatives is to be made in the form of a Royal Decree in which the election day for the general elections must be fixed within 90 days, with election day being the same throughout Thailand. 3/

1/ Albert P. Blaustein and Gisbert H. Flanz, ed., XV Constitutions of the Countries of the World: Thailand 20 (Dobbs Ferry, N.Y., Oceana Press, 1979).

2/ Id.

3/ Id.

Membership in the House of Representatives commences on election day, according to Article 102 of the Constitution. 4/ Therefore, the time interval between general elections and the subsequent taking of office of the elected members is zero.

Under Article 146 of the Constitution, the Prime Minister is appointed by the King, and not elected. 5/

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4/ Supra note 1.

5/ Id. at 31.

TURKEY

Newly elected members of the National Assembly of Turkey take office at 3:00 p.m. on the fifth day after the announcement of the election results by the High Election Council.[1/]

The election process for the new president starts 30 days before the end of the incumbent president's term and shall be completed within 30 days. Depending on the length of time for the results of the election to be taken, the interval between the election and the subsequent taking of office by the new president may last up to 30 days.[2/]

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1/ Article 77 of the Constitution of Turkey [Const.] in Türkiye Cumhuriyeti Anayasasi 127 (Ankara, Millet Meclisi Ofset Tesisi, 1983) and Article 3 of Regulations of National Assembly No. 384 of 1973, as amended in F. Coker, S. Kazanci & F. Kazanci Türkiye Cumhuriyeti Tüzükleri 54-1 (Ankara, Is Matbaacilik ve Ticaret, 1978).

2/ Id., Const., Art. 102, at 160.

VENEZUELA

The Organic Law on Voting (Ley Orgánica del Sufragio) [1] provides in article 91 and 92 that the election of the President and the members of Congress -- Deputies and Senators — must be conducted simultaneously, as a general rule. The date of election must be a Sunday within the first 15 days of the month of December. This allows the election of officials almost 3 months prior to the dates established for the taking of the corresponding office. According to the Venezuelan Constitution, [2] the President must be sworn into office within the first 10 days of the legislative term in a joint session of Congress. [3] Congress convenes in ordinary session on the second of March. [4]

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[1] Gaceta Oficial (G. O.) of December 29, 1977 (Extr.).

[2] G. O. May 11, 1973 (Extr.).

[3] Id. Art. 186.

[4] Id. Art. 154.

ZAMBIA

Pursuant to the provisions of article 38 (8) of the Constitution of the Republic of Zambia of 1973, as amended,[1/] a person assumes the duties of the president on being declared elected to that office. Members of Parliament also assume their official responsibilities on being elected or appointed to Parliament, in accordance with the provisions of articles 63-92 of the Constitution.

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1/ "Zambia," in A. P. Blaustein, 1921-, comp. Constitutions of the Countries of the World (Dobbs Ferry, New York, Oceana Publications, 1971-) (looseleaf).

ZIMBABWE

According to the provisions of article 28 (6) of the Constitution of Zimbabwe of 1979, as amended,[1] the person elected to the presidency of the country assumes the duties of the president on the same day he is elected to that office. Members of Parliament also assume office on being elected or appointed to Parliament in accordance with the provisions of article 41 of the 1979 Constitution.

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1/ "Zimbabwe," in A. P. Blaustein, 1921-, comp. Constitutions of the Countries of the World (Dobbs Ferry, New York, Oceana Publications, 1971-) (looseleaf).

Senator PELL. It has been brought to my attention, Mr. Chairman, that adoption of this proposed constitutional amendment might require conforming changes in the Constitution or in statutes. For example, the Constitution now stipulates that the Congress shall convene on January 3 unless the Congress shall by law set another date. It would be desirable, I believe, to provide for an earlier regular convening date in the Constitution if this amendment were adopted.

Finally, Mr. Chairman, I know that there is concern over whether the dates provided in this amendment permit sufficient time for a newly elected President and newly elected Members of Congress to organize their administrations and staffs before assuming the responsibilities of office. I look forward to hearing the arguments on that question, and it is possible that I could be persuaded that the transition period required by this amendment should be lengthened by an additional week or 10 days.

But I think we should bear in mind the very important fact that if the Presidential candidate appears before the public with his potential cabinet, or certain members of it, already nominated or suggested, the public will then vote for one candidate or the other with greater knowledge of what kind of administration they will receive and will also prevent candidates for President from offering the same post to several different individuals.

I remember seeing in Rhode Island the carriage of my predecessor, Senator James DeWolf, in Bristol. He used to come down to Washington in that, in 1821, and he used to allow perhaps 2 months for the journey. Well, there were reasons then why we should delay as we originally did under the Constitution until March, because it took awhile to get the message from the center of government as to who was President and the administration,

who had won the election, and then it took a certain amount of time to go from the various States to Washington.

Now that we have airplanes and automobiles, it seems to me we should come into the 20th century.

Thank you for your courtesy and for letting us present these arguments.

Senator HATCH. Thank you, Senator Pell. We will turn to you, Senator Mathias.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR.

Senator MATHIAS. Thank you, Mr. Chairman. I join with Senator Pell in thanking you for convening this session. I think it is timely and appropriate and necessary.

I am going to go Senator Pell one better in conserving the time of the committee so we can bring on the expert witnesses by submitting my written statement for the record.

Senator HATCH. Without objection, we will place it in the record.

Senator MATHIAS. I would like to add just a few additional words.

As Senator Pell has suggested, we are really reacting here to technological change. My predecessors didn't have quite as much trouble as his predecessors in reaching the capital, because they were closer. But, in a sense, every American is now closer to Washington, closer in terms of communication, closer in terms of transportation; not only closer than the days of Senator DeWolf, who had to travel in a carriage, but closer than in the days of Franklin Roosevelt when we adopted the current inauguration date of January 20.

So we are suggesting now what was suggested in the 1920's and early 1930's, that we update the function of government. It was updated to the age of steam railroads and automobiles in the 1932 period; it is now being updated to electronic communications and instantaneous worldwide communications and the jet age of the 1980's and 1990's.

Now, it was, I believe, Ambassador Charles Yost who once said that the unanticipated consequences of our decisions are sometimes more significant and more important than what we anticipate, and I think we ought in this case to look at some of the unanticipated consequences of what Senator Pell and I are proposing, and to try to anticipate the unanticipated.

On the negative side—and there is a negative side here—2 weeks is not very long to close down an operation that has been in business for years.

In my own office, my staff looked at this proposal and said, just imagine, closing down this office in 2 weeks' time, closing out the files that have been accumulated for 18 years in 2 weeks' time; it's a monumental task. And I am sure it would be no less monumental in the White House.

So that clearly what we would do by this amendment is force a new method of doing business.

But that is not to say that it isn't a desirable change; it's not to say that we oughtn't to force upon ourselves some different ways of doing business, more efficient ways of doing business—and this would do just that.

On the political side, Presidents would not be able to go through that leisurely process that John Kennedy went through, which I know Senator Pell remembers very well and in which the Kenne-

dys living in Georgetown would invite the prospective Cabinet officers to come for a cup of coffee in the morning, and they would be photographed coming in the house—there wouldn't be that period of time; it would be a different method of doing business.

But that's not to say it might not be a better method and a more responsive and a more responsible method of doing business.

My point simply is that this is going to change the way business is done. We cannot totally anticipate what those changes will be. I think they will be by and large changes for the better—but that is one of the purposes of this hearing, to explore and probe for the unanticipated as well as for what we conceive to be the anticipated benefits.

Thank you, Mr. Chairman.

[The following was received for the record:]

PREPARED STATEMENT OF HON. CHARLES MCC. MATHIAS, JR.

As one of the sponsors of S.J. Res. 71, I thank Senator Hatch for convening these hearings to examine the proposed constitutional amendment to move the Presidential inauguration from January 20 to November 20 and the date for convening the new Congress from January 3 to November 15. I believe that the Subcommittee on the Constitution will find that there are many good and compelling reasons to enact these changes.

For the first century and a half of our national history, four months were allowed between election and inauguration to give the President-elect ample time to arrive in Washington. Such delay made sense during the horse-and-buggy days of our Republic. But by the early 1930's, major progress in transportation and communications made this long hiatus unnecessary. Congress then proposed, and the states ratified, the Twentieth Amendment, which shortened the waiting period to its current length. In the 1980's with rapid transportation and near-instant communication systems commonplace, any delay beyond two or three weeks seems unjustifiable.

A constitutional amendment that would move Inauguration Day up to November 20 would virtually eliminate the lame-duck presidency. The last time the executive branch was under lame-duck stewardship was in the final days of the Iran crisis, when seemingly neither the President nor the President-elect could act with the full power of the Presidency. I think we would be wise to act now to prevent a recurrence of this distressing situation.

Likewise, there is no legitimate reason today for the long delay between the election of a Member of Congress and his or her assumption of office. Election results are known within a few hours of the closing of polls. Furthermore, lame-duck sessions hardly foster serious consideration of national policy. The records of past lame-duck Congresses are vivid testament to the need to eliminate these post-election disasters.

Some critics of this amendment argue that the President-elect would be unprepared to take office as soon as November 20. However, I think that any president would leap at the chance to take office within a few weeks or his or her election rather than to endure the anticlimatic two-and-a-half month wait that the current system requires. In addition, the change would force candidates to address the issue of cabinet choices and other top executive appointments well in advance of election day. The voters could only benefit from such a disclosure during the course of the campaign.

This hearing will, I hope, start a vigorous and thoughtful public debate on the issues raised by S.J. Res. 71. This is a change to bring the machinery of government into step with the times. We ought not lose this opportunity to act decisively in recognition of the sweeping changes that technological progress is working in our society.

Senator HATCH. Thank you, Senator Mathias. Let me just ask this one question. You indicated, Senator Pell, that you are not locked in—and I presume you are not either, Senator Mathias—to a November 20 date; you would be willing to go 10 days to 2 weeks later, if that was considered advisable.

Is that a fair statement?

Senator PELL. That is correct. I prefer the date we have, but the important thing is to do something to reduce this long time when we have the ship of state with nobody at the helm.

Senator HATCH. Senator Mathias?

Senator MATHIAS. I think that is essentially correct. Senator Pell has mentioned, as I have in my statement, the hiatus that occurred in the Iran hostage situation—but there are many other cases in history; for instance, President Ford had negotiated the Vladivostok agreement on nuclear arms control, and there was a long hiatus then after President Ford's defeat and before President Carter took over in which paralysis set in in the arms control picture, then the Carter administration changed signals in March 1977. Had the flow been able to continue, I believe we might now be well ahead on arms control of where we now are.

The fact that there was a long hiatus in which the Ford administration felt unable to send the Vladivostok agreement to the Senate because it was an outgoing administration, the fact that the Carter administration then didn't pick it up when it came in, has seriously damaged the interests of the United States of America.

And it is that kind of damage that I think Senator Pell and I want to avoid.

Senator HATCH. Thank you both, we appreciate the time that you have taken and the ideas that you have.

I am very pleased at this time to call on the former minority leader of the Senate, Senator Hugh Scott of the State of Pennsylvania.

He is knowledgeable about the Presidency and the factors involved in Presidential transitions, having worked closely with President Eisenhower, and of course is intimately familiar with the workings of Congress.

For many years, he served as a very capable and active member of the Judiciary Committee, and we are honored by his presence—and appreciate your taking the time, Senator Scott, to give us the benefit of your valuable insights and experience.

So we will look forward to taking your testimony at this time.

STATEMENT OF HON. HUGH SCOTT, A FORMER U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SCOTT. Thank you very much, Mr. Chairman. I am honored and pleased to be asked to appear and to be in the company of the chairman and my distinguished former colleagues, Senators Pell and Mathias.

My own background, as the chairman has noted, involves having been national chairman of the Republican Party in 1948 and 1949, as well as having had some legislative experience, and having served as headquarters chairman for President Eisenhower in the transition period from November 1952 to January 20, I believe, 1953.

So I have seen some aspects of this problem at first hand.

I would say, first of all, that what justified the amendment changing the procedure during the time of President Roosevelt, from March 4 to a January date—the reasons given are virtually

the same reasons which in my judgment would justify the change from the January date to some date closer to the election. And I agree with the other gentlemen who have spoken, there should be some flexibility with regard to that date, which might seem to be coming rather close on following the election.

I do favor the amendment, because I think the present situation leaves the Nation with a hiatus in policy and administration, and in action. And our very safety may depend on days or even minutes in this modern era, and I think the newly elected President and Congress should be inducted as quickly as possible in order to be as effective as early as possible.

My views generally are those similar to the testimony already heard. I will not develop them further. I have submitted a brief written statement.

There are better reasons than the saving of expense here, but that, too, is an element on which I think I might be qualified to speak; that is, to avoid some of the costlines of transitions.

The last transition, I believe, involved an allocation by the Congress, which is taxpayers' money, of about $2 million. But the right to solicit over and above that from individuals and corporations was preserved. I question, first of all, whether in a transition period there ought to be the addition of voluntary contributions, corporate and individual, because I saw what problems we had in trying to work that out in the case of the Eisenhower transition.

I would like to give you the benefit of that experience.

After the election, the Eisenhower campaign had been carried as much by volunteer activity as it had by organizational activity, and therefore there was a large coterie of enthusiastic supporters who could be called on to help with the transition.

It became clear that since President Eisenhower was the first President in some time to have come to the Congress without an institutional backing, without some base other than his political headquarters, to prepare for the inauguration as President; therefore, some scheme had to be worked out, and Mr. James Lamb and I were in charge of this, and we decided that since the friends of Eisenhower had contributed substantially and since there was unbelievably a 10-percent surplus of unexpended funds left in the treasury, that we would bypass the treasurer of the party, to his annoyance, and go directly to the contributors and ask them if we could keep this money instead of sending it back to them. In almost every case, of course, they said yes, and the money was then transferred.

In addition to which, the question of corporate contributions arose, and what should we do about it. Well, it was decided by the two of us that the first campaign contribution from a corporation would determine the amount of all subsequent contributions from corporations or entities of that kind; for example, if one of the airlines companies sent in a $4,000 contribution, no other airline could contribute more than the $4,000. And if it was $2,000, the same thing.

And we also imposed a maximum, I believe, of $6,000 from corporate contributions.

So that the risk of criticism and the onus of accepting money from private sources was so dispersed as to avoid any justified criticism, and I think we did.

And we raised the $385,000 necessary. That seems a remarkably small figure nowadays. But I mention it to make the point that I think that we can return to relatively small expense if the transition is quick, provided the other arguments for change of the date are reasonable and feasible and are accepted.

I go back to the time when we had the March 4 inauguration, and I recall the long period between the November election and March 4, and during which time very little was done in Congress, almost nothing—a facade of activity was created, but everybody went away and, aside from a few quorum calls and a few minor matters, in those days, until the war came along, there was very little work done, and the almost farcical situation arose of congressional districts having two Congressmen, and you picked your Congressman, whichever you wanted to go to during that period. If you went to the Congressman on the way out, he had little or no interest in the unfinished business of the Congress, and he could meet you in a thoroughly relaxed and unresponsive attitude, if he so felt; or he could disappear, and many of them did that.

On the other hand, there was a second Congressman coming in, so passing the outgoing Congressman on the incoming door there was a new Congressman without authority—without responsibility—and without the necessity to take on the constituency work.

So in that aspect, too, which has not yet been touched on, I believe, the work of the constituency suffered because of the outgoing people no longer being concerned with the constituency and the incoming people not having the opportunity to establish contact.

There are many other arguments—I am sure that some of them may be better than this. But those are among the reasons why I appear here at your invitation, and I thank you, sir.

Senator HATCH. Well, thank you so much, Senator Scott. What do you see as the main advantage of this proposal? And, conversely, what do you see as the main disadvantage of this proposal?

Senator SCOTT. I think the main advantage is the fact that under this proposed amendment Government could be effectively transferred to the hands as decreed by the voters, to the new hands, with a minimal loss of time. The point has already been made that we take longer than almost any country in the world—I can't think of any country where a transition is as long as ours.

So I think that because of the possibility of crises, of emergencies, or serious fiscal problems, that the major advantage would be the speed, the rapidity with which the transition could occur, and which I think would contribute to its effectiveness, although I know there are arguments on the other side.

The main disadvantage may stem from the same thing, and that is the argument that to make your transition too quickly might lead not to effectiveness but to ineffectiveness on account of the difficulty of closing out the old shop and starting up a new one.

So I think that would state them.

Senator HATCH. Well, thank you. I appreciate having your testimony today and appreciate seeing you again and having you before the committee.

Senator SCOTT. Thank you, I appreciate it.

[The following was received for the record:]

Prepared Statement of Hon. Hugh Scott

It is a distinct privilege to be asked to testify before your subcommittee on S.J. Res. 71, an amendment to the Constitution on the commencement of the terms of office of the President and members of Congress.

I favor the amendment.

The present situation leaves the nation with a hiatus in policy, administration and action.

In this modern era when our safety may depend upon decisions made in days or even minutes, the transition to the newly elected President and Congress should be as quick and effective as possible. A lame duck President (and his successor) are presently without real authority and a lame duck Congress is without the essential incentives to performance which existed prior to the election date.

I will not further develop my views as they will probably parallel the reasons of other supporters of this proposed amendment.

Let me turn instead to one aspect of my reasons for support of this change, based on my own experience.

Following the election of President Eisenhower in November 1952, I was responsible for the raising of funds to finance and support the transition up to the date of the inauguration on January 20th, 1953.

As President Eisenhower was not, when elected, a serving public official, he had no base of operations other than his New York headquarters. This situation was terra incognita. Accordingly, the only way to fund the transition was to turn to friends and supporters for help, using the lists available to us.

We adopted a rule of thumb concerning gifts from Corporations. No corporation could give a larger sum than the amount of the <u>first</u> contribution received from that industry or type of organization, nor could any corporate gift above $6000. be accepted.

The total cost of this transition was approximately $385,000. when we did it our way. With later transitions, where the federal government finances the operation the cost now runs into millions and increases with every election.

My purpose in this recitation is to make the point that S.J. 71, if adopted, would return us to a simpler and far less expensive way of funding transitions both as to President and Congress.

Surely the burden on the taxpayers would be far less if the Presidential transition occurred in about two weeks, as compared to the present assembling of huge staffs, consultants and paperwork over a period of 2-1/2 months.

Likewise, the earlier transition to a New Congress, a week or so after the election eliminates the present almost farcial, situation over two months or so of a District with two Congressmen, one going out with no interest in unfinished business and one coming in with no authority to take on responsibilities.

Much the same can be said of outgoing and incoming Senators (with all due respect!)

While I personally favor a single seven year term for Presidents, this is not addressed by S.J. 71. The amendment before you, if adopted, would, I think, have a far better chance of public acceptance, via the State Legislatures than would a proposal for a single Presidential term of whatever length.

Thank you for giving me the opportunity to appear before my old Committee and to stir the fronds of memory.

I have found, paraphrasing Vergil, that it is pleasant to remember these things.

"Et forsans haec olim memminisse iuvabit."

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Senator HATCH. We are going to call our next witnesses to the witness table, and then have a short recess for just a minute or two.

For our next witnesses, we will invite two distinguished gentlemen to appear on a panel. They are John W. Macy, Jr., presently a private consultant on public administration and formerly Director of the Civil Service Commission during the Kennedy and Johnson administrations. Mr. Macy later served as Director of the Federal Emergency Management Agency during the Carter administration.

And the second member of the panel is Harrison Wellford, an attorney presently in private practice in Washington, DC, and formerly an important leader of the Carter administration transition teams in 1976 and 1980.

Both of these men are well qualified to speak on the subject matter of this proposal, Together they represent extensive hands-on experience in Government service and I feel very strongly that the subcommittee is very fortunate to have them here with us today.

So we will first hear from Mr. Macy and then from Mr. Wellford, but if we could take about a 2-minute recess for me to be able to spend a second in the back room, we will do that and within 2 minutes I will come back.

[Brief recess.]

Senator HATCH. Mr. Wellford is not here yet. We will call the committee to order, and should Mr. Wellford come in, I hope he will immediately take his seat at the table. If not, we will listen to you and then we will go to our next panel.

STATEMENTS OF JOHN W. MACY, JR., NATIONAL EXECUTIVE SERVICE CORPS, AND HARRISON WELLFORD, ESQ.

Mr. MACY. Thank you very much, Mr. Chairman, and I am appreciative of your gracious introduction. I am pleased to have an opportunity to express myself on this Senate Joint Resolution No. 71, because I have been a participant in and a student of Presidential transitions since the Truman-Eisenhower changeover more than 30 years ago.

My attention has been directed primarily to the serious difficulties faced by newly elected Presidents in staffing their key appointments at the beginning of a new administration.

From my experience and observation, the transition period between the election and the inauguration is both too long and too short. It is too long because governmental leadership in matters of foreign and domestic policy is in virtual suspense for 77 long days. Whereas the outgoing President has constitutional responsibility until his successor takes the oath of office, the impact of his decisions is shortlived and serious matters tend to be deferred until the new President assumes office. Response to emergencies has been tentative and lacking the conviction necessary for national leadership. On the other hand, the incoming President is reluctant to reveal his policy hand until he has powers of execution. History records that, even with the best intentions, the successor and predecessor have difficulty in achieving a meaningful level of communication during this period.

But the period is too short, as it is presently used, to recruit, select and prepare the President's team of key players who will form the character of the new administration. Unlike the parliamentary system where a shadow cabinet has been formed within the opposition, there is no administration-in-waiting to join the newly elected President and provide him with policy development assistance and to accomplish the execution of existing statutes. The mere process of search, selection, clearance, investigation and confirmation consumes a large portion of the time span of the transition even if the incoming President has reached preliminary arrangements with respect to the top members of his team. Including cabinet officers, subcabinet officers, agency and commission heads, the new President must fill at least 300 critical vacancies at the earliest possible time.

The magnitude and nature of this Presidential problem have recently been studied by the National Academy of Public Administration and the findings published under the title "America's Unelected Government, Appointing the President's Team." I was one of the collaborators in the development of that report. Following a review of the historical experience of the past Presidents in the selection of these officers, the study examined the steps in the process, the problems of recruiting and retention, the obstacles of conflict of interest, and concluded with a series of twenty-two recommendations for possible improvements in the performance of this Presidential function. The following recommendations are particularly relevant in considering the significance of the proposed amendment in connection with staffing the Presidency. Even without the earlier date for assumption of office, the study urges an early start in the exercise of appointment responsibility. The essentiality of such an early start would be magnified if fewer days were available.

In recommendation 6 it is proposed:

> As soon as possible after his party's nominating convention, each major party candidate for the presidency should designate a staff to begin preparations for personnel selection and to serve as the liaison on personnel issues with the incumbent administration. Funds in the federal transition act should be allotted specifically for this purpose.

In recommendation 7 this theme was further emphasized:

> To assist new Administrations in identifying highly qualified candidates for presidential appointments, the national committees of the Democratic and Republican parties should each develop and maintain a permanent, up-to-date talent bank. This should be made available to the party's presidential candidate immediately after the nominating convention.

Such a talent bank, whether maintained by the national committees or some other body, could be useful to an incoming administration only if it contains the names of candidates with genuine and abundant substantive qualifications for the job a President must fill.

In recommendation 8 the transition process would be facilitated:

> Steps should be taken immediately to prepare a set of briefing papers for new Administrations that identify all of the steps formally required to effect a presidential appointment. These written materials should be gathered by the management side of the Office of Management and Budget and made available to every major candidate for the presidency.

This action would correct the existing condition where an incoming administration must acquire basic information de novo because of the absence or unavailability of materials from the predecessor administration.

Finally, in recommendation 9:

> As a first priority during the transition period, the President's personnel staff should establish a (fixed) timetable for interlocking political, investigatory, and conflict-of-interest clearances for its appointees. These should be carefully designed to minimize delay in the clearance process.

The adoption of these recommendations, with an even more accelerated schedule of advance planning and action, would be absolutely necessary to permit a new President to assume office with any operational effectiveness by the 20th day of November.

In view of the serious policy hiatus under the present system, the proposed timetable revision is highly desirable. The inaugural date was changed from March 4 to January 20 in 1937 in recognition of governance deficiencies in the original constitutional schedule in light of the need for critical policy decisions and of more rapid means of transportation and communication. Today there is need for a further tightening in the transition of governmental power in a volatile and rapidly changing world where the factors of space and time impose a true sense of urgency. In supporting the enactment of the resolution, I urge recognition of the necessity for earlier, more expeditious and more professional processes to assure that the President assumes office with the wisdom and talent of his supporting team.

Thank you very much, Mr. Chairman. Those are my brief observations with respect to the proposed amendment, and I reiterate my support for its favorable treatment.

Senator HATCH. Thank you, Mr. Macy. I will have some questions for you in just a second.

Mr. Wellford, let's turn to you. Happy to have you here.

Mr. WELLFORD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Chairman, I probably have to leave in 5 minutes, going over to the Senate. I would ask unanimous consent that my opening statement follow your statement.

Senator HATCH. Without objection, we will place that in the record at that point.

Mr. Wellford.

STATEMENT OF HARRISON WELLFORD

Mr. WELLFORD. Thank you. My name is Harrison Wellford, I am a partner in the law firm of Wellford, Wegman, Krulwich, Gold & Hoff here in Washington.

In 1976 and in 1980 I served as coordinator of Presidential transitions focusing first on the White House and the Executive Office of the President in 1976, and then on the executive branch as a whole in 1980.

I want to commend the committee for giving a close look at this important subject. Transitions have been happening in this country almost every 3 years for the last 20 years, but they have been remarkably little studied. The primary study, initiated by the Brook-

ings Institution, dealt with transitions that are very different from those that we have experienced in the 1970's to the 1980's.

So I think the committee is dealing with an important topic and one that I feel honored to have the opportunity to address.

The Presidential transition period is a unique phenomenon in American Government; it is unique in its duration, the scope of the change involved, and generally, in the absence of partisanship that the participants have shown. At the best, these transitions are periods when citizens of good will put aside partisan passions and work constructively to manage the transfer of power. But because they involve a possible question about who is actually in charge of that power, transitions are also periods of potential peril during which allies and enemies alike can be uncertain as to who is speaking for the U.S. Government.

Through a combination of dumb luck and good will among participants, we have managed to muddle through transitions very well since the first transition from George Washington to John Adams a couple of hundred years ago.

But our pride in the harmony with which power has been transferred in this country should not blind us to the fact that transition is inherently a period of potential peril for our government in the world. The 6-month duration of the transition—3 months for the old team to withdraw and 3 months for the new team to get confirmed and fully assume power—is an astonishingly long period for the leadership of the world's greatest democratic power to be in flux.

To understand the importance of that statement, you have to compare our situation to the European parliamentary democracies. In Europe only a handfull of senior policy positions change hands during the changing government, but in the United States the entire policy superstructure of the Federal Government, thousands of professionals in hundreds of agencies, is replaced in a few months.

This degree of change is unprecedented among the Western allies.

Transition staffs in the last 10 years have become bureaucratic behemoths which no longer put the President-elect's needs first and which, by their confusing and cloudy mandates, create new dangers for an already unstable period. One reason the transition process has gotten out of control is the one the committee is focusing on, and that is the question of whether or not the transition period lasts too long.

While pushing inauguration day up 2 months, to November 20, to me seems impractical for reasons I will discuss in a minute, there is no doubt in my mind that the period should be shortened, perhaps to a mid-December date.

I support a shortened transition period for the following reasons—let me just go through these briefly, and then I will take your questions.

First, an early inaugural would narrow the window of vulnerability, especially in foreign affairs, when uncertainty as to who is in charge may encourage adventures by our enemies while at the same time undermining the President's will to act in a crisis.

Second, it would discourage the creation of an instant army of transition staff with its tendency to interfere and disrupt the ongoing processes of government. At the same time, a shorter period should encourage the President-elect to rely more on senior career officers from the outset to provide continuity to Government.

Third, if accompanied by relieving the outgoing President of the responsibility to prepare a swansong budget, State of the Union Message, and economic message, a shorter transition period should free up staff in the Executive Office of the President, especially OMB staff, to go to work immediately for the new President in helping him prepare his budget and policy messages. As you know, now OMB staff is tied up by the outgoing President from election day until usually well after Christmas, and the lack of availability of that expert staff is a source of frustration for the incoming President, who has his own budget to prepare but can't get access to the expertise sometimes that he needs to prepare it.

With only 6 weeks or so between the election and the inauguration, assuming that one went to a December 20 date, the outgoing President will be more likely to turn his full attention to leave-taking and less likely to make grants, sign contracts, initial Executive orders, or take other steps intended to fence in the new President with lameduck commitments.

The final reason, a shorter period would require the initiation of pre-election planning on a more serious and comprehensive basis than ever before. The outgoing President and the candidates alike would be expected to give serious attention to this responsibility; this attention would in turn legitimize transition planning activities by the career bureaucracy.

Now, having said all of those good things on behalf of shortening the period, there are a number of caveats I would remind the committee about when they think through the pros and cons of accelerating the date of inauguration.

First, the history of preelection planning by past presidencies has been pretty dismal.

Second, if you push the date up too soon after the election, you run into the fatigue factor which affects Presidents and staffs alike. You don't provide very much time for the passions of the campaign to cool, and sometimes it is important for the President-elect to put aside the slogans and doctrines of the campaign before he starts thinking about governance.

And the last point I would make is that sometimes you need to save the President from his friends. Campaign staffs are not necessarily good White House staff or good Cabinet members. If you push the inauguration date up too soon after the election, there will be a lot of pressure on the President-elect to bring the campaign into the White House. We have seen a number of examples in recent presidencies where that didn't necessarily serve the President in the long run.

So with those caveats, I endorse the concept at least of trying to shorten the period between election day and inauguration, and look forward to discussing this further with the committee.

Thank you, Mr. Chairman.

[The following was received for the record:]

PREPARED STATEMENT OF DR. HARRISON WELLFORD

WHEN A DEMOCRACY CHANGES HANDS:
THE TIMING OF PRESIDENTIAL TRANSITION
IN THE UNITED STATES

Mr. Chairman, my name is Harrison Wellford. I am a partner in the law firm of Wellford, Wegman, Krulwich, Gold and Hoff of 1775 Pennsylvania Avenue, NW, Washington, DC. In 1976 and in 1980, I served as a transition coordinator during the Ford-Carter and Carter-Reagan Presidential transitions, respectively. In 1976, I was director of the Regulatory Reform and Government Organization Task Force in the Carter campaign's pre-election planning group and subsequently helped to oversee the transition in the White House and the Executive Office of the President after the election. In 1980, as Executive Associate Director of OMB, I coordinated transition activities for the Executive Branch for President Carter and was a liaison with the Reagan transition team. My resume is attached.

The Presidential transition period is a unique phenomenon of American government -- unique in its duration, scope, and general absence of partisanship. At their best, these transitions are a period when citizens of goodwill put aside partisan passions and work constructively to manage the transfer of power. But because they involve a possible "ambiguity of power," transitions are also periods of potential peril, during which allies and enemies alike can be uncertain as to who is speaking for the United States. In the absence of a crisis, the Government enters a state of suspended animation where most important decisions are simply deferred. In a crisis, uncertainty and inexperience can increase the probability of a significant blunder such as the Bay of Pigs. As Frederick Mosher has written, "The period of transition is one of particular vulnerability for this country because other nations, both foes and friends, may take advantage of our difficulty in making and implementing decisions when neither the incumbent President nor the President-elect is in firm control."

Yet through a combination of dumb luck and goodwill, the United States has managed transitions fairly well up to now. Since the administration of George Washington gave way to John Adams in 1797, there have been 37 changes of leadership under the Constitution. With the exception of the disputed election of 1876, the U.S. government has changed hands for almost 200 years without any serious challenge to the power and legitimacy of the new President. The succession crisis, a period of instability and violence in most parts of the world, does not exist in the United States.

But our pride in the harmony with which power has been transferred in the U.S. should not blind us to the fact that transition is inherently a period of potential peril for our

government and the world. The six-month duration of the transition -- three months for the old team to withdraw, three months for the new team to get confirmed and fully assume power -- is an astonishingly long period for the leadership of the world's greatest democratic power to be in flux.

Unlike European parliamentary democracies where only a handful of senior policy positions change hands, the entire policy superstructure of the Federal government in the U.S. -- thousands of professionals in hundreds of agencies -- is replaced in a few months. Before January 20, the challenge is to prevent an ambiguity of power from enveloping the outgoing President. After January 20, the danger takes a different form when for three months or more an unseasoned President with inexperienced aides tries to direct an unsettled government. In these circumstances, a prevention of a power vacuum, the confusion of the appearance of a dual Presidency, or a breakdown of discipline in the bureacracy requires considerable goodwill and teamwork from people who only weeks before may have been adversaries in a bitter electoral struggle.

Transitions have happened with increasing frequency in the post-war Presidency. In the last 20 years, Presidential transitions have occurred about every three years. Yet despite its importance, the transfer of power in the Federal government has been little studied. The published studies which do exist -- mainly sponsored by Brookings -- dealt with a transition experience very different from those which have become familiar in the 70's. In the early 1960's, Laurin Henry and Richard Neustadt described the Eisenhower and Kennedy years when transitions were managed almost casually by a handful of confidants to the President-elect operating in great secrecy. Since that period, transitions have in one sense come of age, moving from a loosely organized set of personal advisors in daily contact with the President-elect to a highly structured complex hierarchy from which the President-elect may be somewhat aloof.

Transitions in the 70's and 80's have grown into large bureaucratic machines with budgets in the millions of dollars and separate teams for each Federal agency, any one of which exceeded in size the entire transition staff assembled by Clark Clifford for John Kennedy. Carter in 1976 and Reagan in 1980 appointed transition teams of approximately 300 and 1500 people respectively, a change which is positive in some respects but which also increased the potential for confusion and uncertainty in the exercise of power during this critical period.

With the increase in size of the transition staff has come a change in its purpose. The transition teams of the 50's and 60's worked directly with the President-elect and served his immediate needs: selection of a White House staff, selection of the Cabinet, briefings on world and domestic affairs, preparation of the budget, thank yous and other wrap-up duties of the campaign, policy planning of the first 100 days, and inaugural planning.

In the 70's and 80's, the transition staff became more remote from the President-elect and served many purposes not directly related to his own pre-inaugural planning: it serves as a temporary spoils systems to reward campaign contributors and build political bridges to interest groups; it tides campaign workers over until January 20 when they can go on the Federal payroll; it provides a kind of spring training for the President-elect's personnel office to try out new people; and it serves as forward scouts for the new administration in the agencies, showing the flag in the conquered territory and restraining -- by their presence -- efforts of the outgoing administration to infiltrate the career service and entrench old policies with midnight regulations.

The change in the scale and purpose of transition since the Eisenhower-Kennedy period is in part attributable to Congress's decision to pay the transition staffs with public money. Federal funds for transition were available for the first time in 1968 when President-elect Nixon and President Johnson received $450,000 each. Nixon was also the first President-elect to raise private funds ($1,000,000) to supplement Federal transition monies. By 1980-1981, the Federal fund had grown to $2 million for the President-elect and $1 million for the outgoing President. President-elect Reagan also received over $2 million in private contributions.

Why the Presidential Transition Period Should be Shortened

Transition staffs in the last ten years have become bureaucratic beheamoths which no longer put the President-elect's needs first and which, by their confusion and cloudy mandates, create new dangers for an already unstable period. One reason the transition process has gotten out of control is that it lasts too long. While pushing inauguration day up two months to November 20 seems impractical for reasons discussed below, there is no doubt in my mind that the period should be shortened, perhaps to a mid-December date. An earlier inaugural would have the following advantages:

- it would narrow the window of vulnerability, especially in foreign affairs, when uncertainty as to whom is in charge may encourage adventures by our enemies while at the same time undermining the President's will to act in a crisis;

- it would discourage the creation of an instant army of transition staff with its tendency to interfere and disrupt the on-going processes of government. At the same time, a shorter period should encourage the President-elect to rely more on senior career officers from the outset to provide continuity to government;

- if accompanied by relieving the out-going President of the responsibility to prepare a swansong budget, State of the Union message, and economic message, a

shorter transition period should free up staff in the Executive Office of the President, especially OMB staff, to go to work immediately for the new President in helping him prepare his budget and policy messages;

- o with only six weeks or so between the election and the inauguration, the out-going President will be more likely to turn his full attention to leavetaking and less likely to make grants, sign contracts, initial executive orders, or take other steps intended to fence in the new President with lame-duck commitments;

- o a shorter period would require the initiation of pre-election planning on a more serious and comprehensive basis than ever before. The out-going President and the candidates alike would be expected to give serious attention to this responsibility; this attention would in turn legitimize transition planning activities by the career bureaucracy.

Caveats

While I endorse a shorter transition period, I feel strongly that moving the date of the inaugural all the way up to November 20 is impractical. The following caveats discussed below reveal some of the problems which must be considered by proposals to accelerate the date of the inauguration.

Pre-election Planning by the Outgoing Administration

Systematic pre-election transition planning within the incumbent Administration occurs only when the incumbent President is not a candidate for re-election. In 1952, 1960, and 1968, Presidents Truman, Eisenhower, and Johnson, who were not seeking re-election, organized a transition staff in June or July. Planning was nearly completed by election day. In all three cases the Bureau of the Budget career staff was used to coordinate transition preparations in the agencies. Because of the early start, these activities did not conflict with the budget cycle.

When an incumbent President is seeking another term, transition planning waits until after the election, regardless of what the polls say. Anyone imprudent enough to raise the issue internally would be suspected of defeatism if not disloyalty. Some informal clandestine planning is conducted by career staff at OMB and in the agencies, but this work is not acknowledged by the President's political officers, even when they know it is going on. As a result, when an incumbent President is defeated, planning that should ideally take about three months is compressed into several weeks. Even after the returns are in, members of a defeated Administration will be reluctant to move energetically into transition planning.

There is a tendency for White House staff immediately after the loss to become absorbed in the reassuring routines of administration, or the challenges of seeking new employment, and to put off focusing on the details of the transfer of authority.

Therefore, if pre-election planning is to be carried out by the incumbent Administration seeking a second term, it will have to be made part of the routine of Executive Office staff institutions, conducted by senior career staff, and initiated well in advance of the election.

The Fatigue Factor

To require the President-elect to take up the reins of government on November 20 puts great strain on a person often exhausted -- physically and emotionally -- by a grueling campaign. Not only the President-elect but his campaign aides may be in desperate need of a hiatus to catch their breath and recharge their batteries. To force them to make key decisions about personnel and programs within hours of the election is to risk errors which may haunt the new President the rest of his term.

Let Campaign Passions Cool

Every successful candidate comes out of a campaign with a baggage of slogans, promises, and commitments which encumber his ability to govern. The more time that passes between the election of the assumption of power, the lighter this baggage becomes. It takes time to translate ideology, philosophy, and rhetoric into policies and programs for running a government as complex as ours. In the two most recent elections, this problem has been compounded by the fact that the President-elect had spent four or more years attacking the government he must now lead. The President needs a little time to change his idiom from campaign to to governance.

Save the President From his Friends

It is a truism of Presidential scholars that the skills and personalities most adept at winning elections are not the same as those required to govern a nation. Advance men, fund raisers, and campaign strategists may be completely unprepared to exercise the day-to-day responsibilities and attitudes of statesmanship. The President-elect needs time to put some distance between the campaign apparatus and the Presidency. If he is rushed into office prematurely, the temptation to bring the campaign into the White House may be overwhelming.

To avoid this pressure, an earlier inauguration date must make absolutely mandatory pre-election screening and "short-listing" of candidates for key cabinet and White House jobs. For reasons which we discuss below, no modern President has been very successful in pre-selecting key members of his Administration significantly in advance of the election.

The Perils of Pre-Election Planning

If the inauguration date is to be advanced to November 20 or a comparable early date, the President-elect will have to rely on sophisticated and comprehensive planning initiated months in advance of election day. Presidents Nixon, Carter, and Reagan all initiated such planning with varying success.

Three major problems -- all growing out of the dynamics of the campaign -- thwart pre-election planners. First is the attention span of the candidate. The first duty of the candidate is to get elected. In the last two months of a campaign when the planners need guidance and decisions, the campaign leadership is jealously guarding the candidate's time and often resents the "distractions" of issues which can be put off until after the election. Plans, for example, to get candidate Carter to narrow the list of candidates for key Cabinet posts in late October in the 1976 campaign were shelved when the gap between Carter and Ford in the polls began to narrow and the campaign responded with new bursts of demands on the candidate's time.

A second problem faced by pre-election planners is the fear by the campaign that news about the candidate's choices will leak out and embarrass the campaign. Campaigns typically promise more than the President can ever deliver; campaign managers, knowing this, like to keep their options open. If several party factions believe that they have the inside track on appointment of a supporter to be Secretary of State, the last thing the campaign wants to do is disappoint them by premature disclosure of the President's choice.

A third problem is the rivalry which pre-election choices may stimulate in the campaign itself. Nothing is more destructive of unity among the candidate's troops than the rumor that while campaign activists are working round the clock to get the candidate elected, a group of "planners" is sitting in a back room somewhere dividing up the spoils of the expected victory. This problem became evident in the Carter campaign of 1976. A small transition planning group directed by Jack Watson was created soon after the convention with the mandate to conduct pre-election screening of personnel and to prepare policy papers on foreign and domestic issues. The Watson group was intentionally segregated from the campaign staff on the theory that otherwise long-term planning would be overwhelmed by short-term crises. The lack of contact between Watson's policy planning staff and Hamilton Jordan's campaign staff, while keeping the planners from being pulled into the vortex of the campaign, led to misunderstanding between the two groups. Intense press interest frustrated the attempts of the planning group to keep a low profile and led to rumor and speculation within the campaign which made it difficult for the planning staff to "market" their analysis with the candidate.

Senator HATCH. Thank you, Mr. Wellford. Let me ask you this, Mr. Macy, do you feel that making a Presidential candidate's Cabinet selections a part of his campaign would be a good change, because that would naturally, it seems to me, come from this type of amendment—or will it make those important Cabinet selections a result of politics rather than reflective thought on, say, truly qualified individuals?

It seems to me that if we go with this November 20 date, it may really be a question about whether Cabinet selections will then be chosen politically rather than reflectively.

Mr. MACY. My belief, Mr. Chairman, would be that the earlier date would have a compelling effect on bringing into play earlier planning, particularly with respect to the selection of key personnel.

Senator HATCH. I will agree with that.

Mr. MACY. And I believe that all too infrequently is there a concern during the campaign about the nature and quality of those that will be accompanying the President into office in key positions, positions that will make the character of his administration.

I think regardless of the length of time, there will be the problem of dealing with the seekers and overlooking the sought; in other words, there is a tendency to turn to those who have been involved in the campaign, and to see them as the principal source.

And in many instances, as Mr. Wellford has pointed out, that source is not sufficiently appropriate or prepared to take on senior positions within the administration.

Senator HATCH. It may also be that those who are affiliated with the campaign may be foreclosed because of the need to avoid politics. I mean, this could go either way.

Mr. MACY. That's right.

Senator HATCH. I could see, you know, where there might be a greater sense of bipartisan selection, or selectionship, I guess we could call it, during the campaign if a Presidential nominee or sitting President had to basically talk about his future Cabinet.

Mr. MACY. Certainly more in the way of communication between the incumbent and the new President is desirable for all purposes.

I am encouraged by what I heard here on my left, because my own experience has been that it has been very difficult for the incoming and outgoing Presidents to come together and deal with some of these critical issues.

It would seem to me that the earlier date would prompt some discussion as to the retention of certain officials for at least a brief period of time in order to assure some continuity.

Senator HATCH. But that prompts another question in my mind.

Do you feel that a Presidential candidate can realistically be expected to run his campaign and organize the Cabinet at the same time? Won't the Cabinet selections be more the product of an election atmosphere, maybe of politics, than of reflective thought aimed at selecting the most qualified people? That is putting it another way. That is something that bothers me.

Mr. Wellford, do you have some comments about that?

Mr. WELLFORD. I think you have put your finger on one of the most vexing problems in trying to think through the practicalities of preelection selection.

In the Carter campaign, 1976, there was a schedule developed in July 1976, after the convention, which would have had the candidate, Carter, go through a final selection of people for key Cabinet and White House positions in the last 2 weeks of the campaign.

Now, that was all thought out very rationally and was considered by the people who put the plan together as a sign of great responsibility and foresightedness. And in an ideal world that would be true.

But several practical problems arise. First, when you talk about key Cabinet and White House positions, you are talking about dividing up the fruits of victory to a significant degree, both for staff and for interest groups. And the people who are running the campaign day to day, who are out there trying to win votes in a 24-hour mad race to the White House, they get very uncomfortable when they hear that there is a group of planners sitting behind closed doors deciding who is going to get the key jobs in the White House, and it tends to sow disunity and suspicion within the President's own ranks.

Second, there is the problem of leaks about some of these choices.

Senator HATCH. I think in time the Presidential candidates won't have to worry about leaks; they are going to have to actually declare who their people are going to be. That is one of the problems, it seems to me—both a plus and minus—I see it more as a minus personally.

But if the Presidential candidate is more concerned about selection of his Cabinet before his own election than he is in the election, then they may have to be, because it may be that that may be part of the election process. That may be good or bad—I don't know. That is one thing I am trying to ascertain here.

Mr. WELLFORD. I think, Senator, that there are occasions when it has worked somewhat, and those occasions where you have a rare combination of an elder statesman with the complete trust of the candidate, who has clearly taken himself out of any ambition to hold a position himself, so he is trusted by everybody—Clark Clifford played that role to some degree for Kennedy in 1960. If you have such an individual with that kind of trust, then some of this preselection can take place in the right kind of atmosphere.

But that is a rare circumstance. And I think it is basically a very difficult problem.

Senator HATCH. Mr. Wellford, you indicated that you don't agree with this particular amendment, but you would be amenable to a shortening of the time. Senator Pell, the author of this amendment, has indicated that he would be amenable to a slight extension of the time, maybe 10 days, maybe 2 weeks.

How does that sound to you? Would that alleviate your concerns and resolve the problems that you see in your mind here?

Mr. WELLFORD. My sort of rough estimate is that if you had a period of 6 to 7 weeks—let's say 6 weeks after the election—which would put you about the week before Christmas——

Senator HATCH. It would put you right about Christmas time.

Mr. WELLFORD. Yes. That would be enough time to give the President-elect the opportunity to get his key people together and at the same time provide a little distance from the campaign.

Senator HATCH. You agree with the thrust of what Senator Pell and Senator Mathias have said, that the Congress needs to come into being about a week before whatever date is decided for the inauguration of the President under this amendment?

Mr. WELLFORD. I think so. One thing that I am absolutely convinced of is that last month before the inauguration has produced very little value for the President-elect or the country, in my experience; there has been a lot of wasted motion and a lot of confusion about who was in charge of this country.

And I think we can't tolerate that any more.

Senator HATCH. One thing that intrigued me about your statement was that if you do shorten the time, you may have less—well, you alleviate the necessity of a last-ditch swansong budget, and you have both indicated this budget and the——

Mr. MACY. State of the Union.

Senator HATCH [continuing]. And State of the Union Address—I remember when President Carter left office, he provided for massive increases in the military, if you looked at his 5-year plan. And a number of Democrats have been very uncomfortable with that ever since because actually Reagan's increases for the military, as I understand it, are below what Carter recommended over the same 5-year period. And it has been somewhat embarrassing to the Reagan administration and somewhat embarrassing to some of our colleagues who don't agree with increasing the military as much as President Reagan or, in this case, President Carter, and a lot of people felt that the 5-year estimate on the military that Carter put forth in his budget proposal was for political purposes.

And the Reagan people would choose to believe that, of course, he was being a statesman, recognizing the problems that exist.

But I see a lot of games like that that presently do exist under our present system. I worry a little bit about your suggestion that maybe a week before Christmas we could install the President.

Mr. MACY. I shoot for December 1.

Senator HATCH. You would shoot for December 1 rather than December 20.

Mr. MACY. I think that that provides the pressure that is desired in the amendment, and also gives enough time to work out some of these fundamental decisions.

Senator HATCH. I am also looking at this problem of the intensity and the stress of modern Presidential campaigns. I looked at Walter Mondale this morning, and he looked like he had been dragged through a wringer; I mean, he really looked tired. And Gary Hart has been suffering from bronchitis and other problems.

And for those who really get involved in a major primary contest, it becomes an endurance contest as much as anything else, in some ways.

Mr. MACY. I think we need to look at that process also, Mr. Chairman.

Senator HATCH. Well, they may be too tired, if you just give them from just, say, November 4 to December 1—they may need that little bit of time to kind of catch up.

If you have that short of time, that means they don't have time to take a week or two off; they have got to go right to work solving

these problems, or face the possibility of people who are not elected making all these choices.

Mr. WELLFORD. And the modern process of actually giving the President the mantle of leadership has become such an elaborate ceremony that the whole process of getting ready for that change of power is nothing to ignore either. I mean, trying to plan for the balls and the ceremonies has been a major preoccupation of Presidents when they have had 3 months to do it, and I can imagine the pressure they would be under if they only had 5 weeks.

Senator HATCH. Well, thank you. Senator Pell, I notice that you are here—if you would care to come up and ask any questions, I would be delighted to have you participate.

Senator PELL. Thank you, Mr. Chairman. I just have one question.

Wouldn't it be an advantage to the country if the electorate knew specifically the sort of people who would be in the Cabinet, if these choices would be made in advance? As Senator Mathias said earlier, this amendment, if passed, would force changes, but maybe these changes would be for the good, and as of now you often get a pig in a poke. We can all think of Cabinet officers, if their names had been advanced before, probably would not have been appointed—in both Republican and Democratic administrations.

And I would be interested in your reaction to that thought.

Mr. MACY. I would react to that very favorably because I believe that what you are endeavoring to achieve in this amendment is a rather basic change in the pattern of doing business. And it would force some of the adjustments that we have been talking about by the added pressure on the date, and that those changes could be guided into very beneficial channels as far as the national interest is concerned.

Senator HATCH. Well, you both certainly have had a lot of experience, extensive experience, to advise this committee about this issue, so we are very grateful that you have come here today.

We would appreciate any additional information you can send to us in writing that we can put in the record. For instance, you indicated some 300 appointments have to be made within a relatively short period of time. I would like to have a list of those appointments for the record.

Would you provide that, Mr. Wellford, and, to the extent that you differ with that—or if you could both work together on that, I would be very appreciative.

Mr. MACY. Yes, indeed.

Senator HATCH. I would like to have that. I would like to have any other suggestions that you may have with regard to this amendment so that we walk into this with as much intelligence as we possibly can.

And then I note the publication that you have cited, Mr. Macy, and that should be of great help to this subcommittee as well.

Mr. MACY. I hope it is, because there was a good deal of thought given into it.

Senator HATCH. I understand.

Mr. MACY. And in each recommendation there was a general consensus among all of those who had been involved in supporting Presidents in that process since the time of President Truman.

Senator HATCH. I have to admit I haven't made up my mind yet. It's a tough issue, it's intriguing to me. I really have to weigh these questions of whether we should—you know, the questions concerning announcements of Cabinet-level people or leaks concerning Cabinet-level people, whether they really should play a predominant role in electing or defeating a Presidential nominee.

There are a lot of tough questions here that I see that need to be answered, but it is also an intriguing idea, and I commend Senator Pell and Senator Mathias for bringing it to our attention.

I thank both of you for being here today.

Mr. WELLFORD. Thank you, Mr. Chairman.

Mr. MACY. Thank you for the privilege of being here.

Senator HATCH. Our last panel will consist of three prominent and accomplished scholars.

They are Dr. Norman Ornstein, professor of politics at the Catholic University, and presently a visiting scholar at the American Enterprise Institute for Public Policy and Research, and series editor of public television's "Congress: We, the People."

Professor Stephen Wayne, a professor of political science and public affairs from the George Washington University.

And Dr. Paul David, a professor-emeritus at the University of Virginia.

If you three could please take the three microphones, we would appreciate it.

Each of these men has spent considerable time and effort studying the proposal that we are considering here today. Each has an outstanding background of academic achievement, and each has a well-developed understanding of the way our government works.

So I want to thank all three of you for being with us today, and we are looking forward to listening to you and taking your testimony.

So we will start with Dr. Paul David first, then we will go to Professor Stephen J. Wayne, and then Dr. Norman J. Ornstein, in that order, if we can.

STATEMENTS OF PAUL T. DAVID, PROFESSOR EMERITUS, UNIVERSITY OF VIRGINIA; STEPHEN J. WAYNE, PROFESSOR OF POLITICAL SCIENCE AND PUBLIC AFFAIRS, GEORGE WASHINGTON UNIVERSITY; AND NORMAN J. ORNSTEIN, VISITING SCHOLAR, AMERICAN ENTERPRISE INSTITUTE

Dr. DAVID. Thank you, Mr. Chairman. I appreciate this opportunity to appear before this subcommittee, as I did in 1961 on this same subject.

During the 1950's I was director of government studies at the Brookings Institution while Dr. Laurin Henry was writing his monumental study of Presidential transitions, and I have followed the subject intermittently since then. In fact, Laurin Henry did another chapter on transitions for my recent book on the 1980–81 election and transition.

Turning to Senate Joint Resolution 71, it seems to me that it is a very commendable effort to shorten the transition period between election and inauguration, which is certainly an increasingly dangerous period in foreign affairs. The President and the executive

branch are at their weakest during this period, and the Congress is either out of session or not yet fully organized.

The proposed amendment, however, would give the incoming President only about 2 weeks in which to get organized, and may give inadequate time for counting the election returns and settling any challenges or recounts that may be necessary. The recount thing, when it does occur, is likely to be very time consuming.

For these and other reasons, I prefer an alternative proposal that I first developed after the bad weather of the Kennedy inauguration of 1961. This was published at the time as a letter to the Washington Post, and was presented in hearings before this subcommittee in 1961 with a draft of a proposed constitutional amendment which I developed at that time. I have since located copies of it again and brought them with me this morning, and would appreciate it if the draft amendment could be included in the record.

Senator HATCH. Without objection, we will place it in the record at this point.

[The following was received for the record:]

DRAFT OF PROPOSED CONSTITUTIONAL AMENDMENT ON DATE OF ELECTION, CONVENING OF CONGRESS, AND INAUGURATION OF THE PRESIDENT

SECTION 1. Sections 1 and 2 of the 20th article of amendment of the Constitution of the United States are hereby repealed.

SEC. 2. The terms of the President and Vice President shall end at noon on the first Friday after the first Monday in November, and the terms of Senators and Representatives at noon on the first Monday in November, of the years in which their successors are elected; and the terms of their successors shall then begin.

SEC. 3. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the first Monday in November, unless they shall by law appoint a different day.

SEC. 4. The election for Senators and Representatives shall be held in each State on the first Tuesday in October of the years in which such elections are to be held.

SEC. 5. The Congress shall adjust the times of voting for President to conform to the provisions of this article; and the legislatures of the respective States are authorized to adjust the times of State elections, where necessary or desirable to conform to the provisions of this article, and may also make suitable adjustments in the times of the beginning and ending of terms of office of elected State officers.

SEC. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within 5 years from the date of its submission.

Dr. DAVID. Thank you. What I proposed was a complete rescheduling of the general election, convening of Congress, and inauguration of the President, as follows:

Election of President and Congress, first Tuesday in October.

Convening of Congress, first Monday in November.

Inauguration of the President, first Friday after the first Monday in November.

If I might, I would like to speak a little further about the reasons for this schedule. Under the proposal, the national party conventions would continue to be held in July or early August, leaving most of August available to organize the campaigns and September in which to conduct them. Presidential messages on the state of the Union, the economic report, and the budget would continue to be sent to Congress in early January, and the fiscal year would continue to begin on October 1—and end on September 30. Congress would meet annually in November.

The proposed new schedule would have the following advantages:

First, the period between election and inauguration would be shortened to approximately 5 weeks. This interval, whatever its length, is potentially one of great danger, and should therefore be as short as possible. But there must be time to count the election returns and make any necessary recounts; and the incoming President must have some minimum period in which to organize his administration.

Second, the length of the Presidential election campaign would be shortened by a month and it would be concentrated in September, a good time to hold it, assuming that the parties would continue to hold their conventions in July or early August.

Third, in the event of a change in administration, the major messages to Congress in January would all become the responsibility of the new administration, as they should be. It would have 2 months in which to prepare them.

Fourth, the weather on the first Friday after the first Monday in November may not be ideal, but it does come when there is some reason to expect that the weather will be suitable for large-scale outdoor ceremonies, unlike January 20.

Fifth, the new Congress would convene in time to count the electoral votes for President and take such action as may be necessary. It would have about 2 months in which to complete its organization work before receiving the major messages in January. It could then take up the budget promptly, and would greatly increase its chances for completing action on all appropriation bills before September 30. It should be able to recess in advance of the national party conventions in Presidential years, and to adjourn by the middle of October or earlier in most years.

As I said, this proposal was first made in 1961 as a result of the bad weather of the Kennedy inauguration, which happened to be followed by almost equally bad weather for the Johnson inauguration of 1965. As some of you may remember, Johnson went to the hospital with a respiratory ailment right after his inauguration in 1965 as a result of that weather.

Intermittent discussions in the years since 1961 have indicated that the proposed changes would not only improve the timing of the Presidential inauguration, but would do much to improve the scheduling of congressional activities throughout the calendar year and fiscal year.

I have had very few adverse comments on the proposal, although it has now been published—I think this will be the fifth time in one form or another. Since it would require a constitutional amendment, it is subject to the usual inertia of all constitutional proposals, but I would think it has enough merit to perhaps get somewhere on its own.

At any rate, Mr. Chairman, I do hope that as you consider the problem of the transition that you will also consider the possibility of moving up the election. The campaign itself is too long, as it is now, and by moving up the election you could move up the convening of Congress conveniently and still provide the 5 weeks I spoke of for the transition, which seems to me to be—I've thought about it over the years—about the right length of time to do the various things that do have to be done after the election is over and the President is getting ready for his inauguration.

[The following was received for the record:]

Prepared Statement of Paul T. David

S. J. Resolution 71 is a commendable effort to shorten the transition period between election and inauguration, which is increasingly a dangerous period in foreign affairs. The President and the Executive Branch are at their weakest during this period, and the Congress is either out of session or not yet fully organized. The proposed amendment, however, would give the incoming President only about two weeks after the election in which to get organized, and may give inadequate time for counting the election returns and settling any challenges or recounts that may occur. For these and other reasons, I prefer an alternative proposal that I first developed after the bad weather of the Kennedy inauguration in 1961. This was published as a letter to the Washington Post and was presented in hearings before this Subcommittee in 1961, with a draft of a proposed constitutional amendment.

What I proposed was a complete rescheduling of the general election, convening of Congress, and inauguration of the President, as follows:

Election of President and Congress, first Tuesday in October.

Convening of Congress, first Monday in November.

Inauguration of the President, first Friday after the first Monday in November.

Under this schedule, the national party conventions could continue to be held in July or early August, leaving most of August available to organize the campaigns and September in which to conduct them. Presidential messages on the State of the Union, Economic Report, and Budget would continue to be sent to Congress in early January, and the fiscal year would continue to begin on October 1 and end on September 30. Congress would meet annually in November.

The proposed new schedule would have the following advantages:

1. The period between election and inauguration would be shortened to approximately 5 weeks. This interval, whatever its length, is potentially one of great danger, and should therefore be as short as possible. But there must be time to count the election returns and make any necessary recounts; and the incoming President must have some minimum period in which to organize his Administration.

2. The length of the presidential election campaign would be shortened by a month and it would be concentrated in September - a good time to hold

it - assuming that the parties would continue to hold their conventions in July or early August.

3. In the event of a change in Administration, the major messages to Congress in January would all become the responsibility of the new Administration - as they should be. It would have 2 months in which to prepare them.

4. The weather on the first Friday after the first Monday in November may not be ideal, but it does come when there is some reason to expect that the weather will be suitable for large-scale outdoor ceremonies, unlike January 20.

5. The new Congress would convene in time to count the electoral votes for President and take such action as may be necessary. It would have about 2 months in which to complete its organization work before receiving the major messages in January. It could then take up the Budget promptly, and would greatly increase its chances for completing action on all appropriation bills before September 30. It should be able to recess in advance of the national party conventions in presidential years, and to adjourn by the middle of October or earlier in most years.

The proposed new schedule would require a constitutional amendment to change existing provisions for the convening of Congress and inauguration. The Federal Constitution does not require that the election be held on the first Tuesday after the first Monday in November, and the Act of 1845 could be changed by Congress so far as federal elections are concerned. Unfortunately, a number of state constitutions, written since 1845, do contain provisions that fix the day on which general elections are to be held. A federal amendment could override such provisions, but might need to unfreeze the situation for state elections as well as federal in order to facilitate the entire set of changes.

The necessary amendment might be relatively easy of adoption if it could be confined to the scheduling problem. The first Tuesday after the first Monday in November is not even a very good date for state elections, as many state legislators would realize if they got around to thinking about it. State governments have their own problems of transition when a new Governor is elected, and should reconsider the rationality of their existing schedules, which generally are afflicted with a relationship to the timing of the fiscal year that is no happier than that of the federal government.

This proposal was first made in 1961 as the result of the bad weather of the Kennedy inauguration, which happened to be followed by almost equally bad weather for the Johnson inauguration of 1965. Intermittent discussions in the years since 1961 have indicated that the proposed changes would not only improve the timing of the presidential inauguration, but would do much to improve the scheduling of congressional activities throughout the calendar and fiscal years. Adverse comments on the proposal have been few. Since it would require a constitutional amendment, the usual factors of inertia are present, but the merits of the proposal are such that something like it may eventually receive serious consideration.[1]

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[1]The proposal has been published twice in the Washington Post, on June 28, 1961 and February 7, 1965. It was presented, with a draft of a proposed constitutional amendment, at Congressional hearings; see Nomination and Election of President and Vice President and Qualifications for Voting. Hearings before the Subcommittee on Constitutional Amendments, U. S. Senate Committee on the Judiciary, 1961, Part 2, pp. 426-30. It was also published in the Policy Studies Journal, Vol. 2, Summer 1974, pp. 298-99.

Senator HATCH. Thank you, Dr. David. Professor Wayne?

STATEMENT OF STEPHEN J. WAYNE

Professor WAYNE. Thank you, Mr. Chairman. I, too, appreciate the opportunity to testify before the committee. I think we heard a discussion of many of the problems of transition this morning. I would simply like to point out that these problems begin well before the transition and continue well into the new Government. Governing before, during, and after a national election is not easy. The President's capacity to mobilize support for his policies declines; the motivation for practically every decision he makes is suspect; perceptions of the national interest, which are always difficult to separate from self-interest, become blurred; and long-term planning succumbs to short-term political considerations.

Then we have the election, a new President is chosen, and in the interim policymaking becomes more difficult. The hopes of the electorate rest with the new President, but decisional responsibility remains with the incumbent, at least for the next 2½ months. Barring a crisis, the lameduck is hard pressed to generate any support for his policy decisions.

The danger is that even in a crisis he will be hard pressed to get support, or, what's worse, I think, for a democratic society, he will induce or exaggerate the crisis in order to get the support.

These are the problems, which, as has been pointed out, prompted the 20th amendment and prompt the proposed constitutional

change. Obviously, if we begin the congressional session on November 15 and the Presidential term on the 20th, it would eliminate a large part of the lameduck period. It would get newly elected officials quickly into place and remove those who were defeated, retired, or appointed by the previous administration. We could address political problems, we could mobilize support, the bureaucracy could be given direction, and, as Professor David points out, the weather might be nice. There might even be news between Thanksgiving and New Years.

It would be nice to think that a simple calendar change could produce such desirable results, that it could quickly transform the judgment of the people into an operational government that would provide continuity and stability, that would make national policy, that would build support, that would help implement campaign promises. But I doubt if it would. My fear, in fact, is that it would aggravate the problems of transition.

It seems to me, Mr. Chairman, that the difficulties our National Government faces today during the election cycle and between it and the inaugural period are not caused solely or even mainly by the calendar. They result from the increasing personality orientation of our partisan political system, they result from the increasing pluralism of the American polity, and they result from the increasing complexity of judgments, policy judgments, here and abroad.

In my prepared testimony, I discuss these problems—I don't want to spend the time this morning in oral testimony to go through them, but they are part of my written statement. I would like to simply note some of the immediate problems which others have commented on and one or two that they have not.

We have all heard Mr. Macy and Mr. Wellford talk about the problems of appointments. We know that a President can't govern alone. It seems to me that the shortened period of 2½ weeks which the amendment proposes would not be sufficient to judge the qualifications of potential appointees, perform the required background checks, the FBI clearances, and have the nominees confirmed by the Senate. Presidents might be tempted to depend increasingly on their campaign staff not only for White House positions, as they currently do, but for department and agency heads as well, an awful prospect.

The campaign may be a good time for measuring industry and loyalty, but it is not the best time to assess the capacity of people to understand complex issues, to balance competing viewpoints, or to work with those who do not share the candidate's perspectives and the candidate's goals.

So what would candidates have to do? Well, there are a couple of options. One is they would have to have a personnel office operating during the campaign. Undoubtedly, it would have very little supervision from the candidate who is being rushed from city to city and State to State. A second proposal, which has already been discussed, is to announce the Cabinet after the nomination. Then we could elect a whole team. But there is a danger in that. Let's say the President decides in July and August who the Cabinet members are to be. He announces his choices—and then in the midst of the campaign something comes up about a particular nominee. Im-

mediately that problem becomes the focus of the campaign. Should he keep the prospective nominee on the ticket, is he behind him a thousand percent?

If such a situation were to occur, then there would be an even greater emphasis on personality factors and less of a policy discussion. It would divert the focus of the campaign; it would make personality more important.

And, of course, we know that choosing the Cabinet is only a small portion of all the people that the President must have to choose. The current administration, I think, has demonstrated why White House involvement in sub-Cabinet appointments is absolutely essential. The President needs a negative if he is going to maintain supervision over the departments and agencies and implement his policy objectives. In a shortened period White House officials will have almost as many demands on their time as the President, and may not have enough time to attend to these appointment problems.

Why do we need such a long transition? We need it because in my opinion, the executive branch has become so politicized and because political officials are not willing as they were in the past to rely on civil servants to ease the transition, to look out for the interests of the new President, and to do so within his conceptual framework.

More often than not, a major objective of the transition is to minimize the influence of the permanent Government and their clientele. If a new administration sees the Government as the problem, they are certainly not likely to place much faith in the people who are running it.

In addition to educating new appointees, transitions serve another purpose—and this is one which I haven't heard discussed this morning. They help establish relationships among institutions. The importance of liaison before and during the first months of a new administration, particularly liaison between the President and Congress, cannot be underestimated. This is the time when campaign debts are due, when personnel requests threaten to overwhelm the Congress, when the President appears to have all the perquisites, when the uncertainties of channels of communication and patterns of influence are greatest.

When we look back at the contrast between the Carter and Reagan transitions, we see the nature of the problem, and also see what good transitions can do for a President in his initial relations with Congress.

Mr. Chairman, I believe a successful transition takes time, and the time factor is accentuated by a new administration's need to make and implement its domestic policy agenda as quickly as possible. Unless Presidents take advantage of their honeymoon period, they lose the benefits which victory provides: The good will of the population, unified supporters of their own party, disarrayed opponents, and favorable media coverage.

Since Presidential influence tends to decline over the course of an administration, particularly with respect to Congress, Presidents must either move their agenda or lose their agenda, particularly the most controversial and innovative policies. The irony is that they have to do so when their knowledge of the problems, the

solutions, and the Government's capacity to deal with those problems is least. They have to learn quickly; 2½ months is short enough, 2½ weeks is insufficient.

Contemporary transitions do not guarantee continuity, but they are a hedge against abrupt decisions and departures. Claims of an election mandate combined with the euphoria of victory can induce precipitous actions by those unaccustomed to governing. A 2½-month hiatus provides at least an opportunity for reflection.

In summary, Mr. Chairman, I believe time is necessary for an orderly transition to power. It is necessary for choosing political officials. It is necessary for reestablishing institutional relationships. It is necessary for internal coordination within the executive branch, its organizations' and its processes. It is necessary for the people in the White House including the President to study the issues, to hear opinions, to balance interests, and to devise options, even when the goals have been articulated during the campaign.

If we had more cohesive policy-oriented parties, if we had shadow governments, if we had bureaucracies upon which newly elected officials were willing to depend, it wouldn't be as necessary. But in a personality-oriented, pluralistic system that deals with complex policy issues, it is.

In my opinion, the proposed amendment would not upgrade the Government's performance or produce better and more contiguous policy decisions. It might speed up those decisions, but it might also engender more precipitous responses and actions.

I don't think that is desirable. Government is not improved if lame ducks become sitting ducks.

[The following was received for the record:]

Prepared Statement of Stephen J. Wayne

Governing in the period before, during, and after a national election is not easy. A President's capacity to mobilize support for his policy goals declines. The motivation for practically every controversial decision he makes is suspect. Perceptions of the national interest, which are always difficult to separate from self-interest, become even more blurred. Long-term planning succumbs to short-term political considerations.

The behavior of Members of Congress is also affected. Those whose party does not control the White House become more unified in their opposition to the policies and pronouncements of the incumbent. Whatever bipartisanship there was is replaced by partisan posturing and voting.

Outside the government interest group leaders reiterate their goals, reminding offical Washington of their organizational muscle. The American public polarizes along partisan, issue, and ideological lines. And foreign governments give greater weight to the political implications of an administration's response.

Then the election occurs; a new President is chosen; and policy making becomes even more difficult. Hopes rest with the President-Elect, but decisional responsibility remains with the incumbent, at least, for the next two and one-half months. Barring crises, this lame duck will be hard-pressed to generate support for any major policy decision. The danger is that even in crisis, he may not be able to do so, or just as harmful for a democratic society, that he may induce or exaggerate a crisis in order to generate support.

These are the problems that prompted the twentieth amendment and prompt the proposed constitutional change. Beginning the congressional term on November fifteenth and the presidential term on the twentieth would eliminate most of the lame duck period. It would get newly elected officials quickly into place and remove those who were defeated, retired, or appointed by the previous administration. Critical problems could be addressed. Political support could be mobilized. The bureaucracy could be given direction.

And there would be other benefits. For a change there would be news in the Thanksgiving to New Years interregnum. The inauguration might even occur in good weather.

It would be nice to think that a simple calendar change could produce such desirable results, that it could quickly transform the judgment of the people into an operational government, providing stability and continuity, making national policy, building support, and implementing campaign promises. But alas--I doubt if it would. In fact, I fear it might aggravate the problem of transition.

The difficulties experienced by our national government during the election cycle and the inaugural period are not caused solely or even mainly by the election calendar. They result from the increasing personality orientation of partisan policies, from the increasing pluralism of the American polity, and from the increasing complexity of policy judgments.

Parties are not what they used to be. They are not as cohesive as they were two or three decades ago. Party leaders do not control nominations for national office as they did. It is only a slight exaggeration to say that we have a self-selection process today in which individuals compete for the legitimacy of a party label rather than the privilege of articulating and backing party positions. (More often than not, these positions are a consequence of who is in office and not the other way around.)

The victors are there because of their own skills and those of the campaign technocrats they hire. They owe their election to themselves (although the party label in many districts is still critical). They consider themselves free agents. They play to their own pied piper.

All of this has made presidential leadership and institutional cooperation harder to achieve. Party majorities do not easily convert into working majorities any longer. The system has become more personalized.

And that's not all. It has also become more pluralistic. Interest groups have proliferated and professionalized. Their agendas compete for attention and adoption. Moreover, their increasingly single-issue orientation makes compromise more difficult.

Congress reflects this pluralism. It has become a more responsive, representative body. That is why it has such difficulty passing laws. Similarly, within the Executive Branch, there is greater receptivity to outside views. All of this makes a national interest harder to discern and coalition-formation more painstaking (and more necessary).

Policy has also become more complex. Rarely is a single committee or single agency involved. There are more participants on the Hill, within the Executive Branch, even within the Presidency. Turf fights, informational disputes, conflicting advice, hamper policy making and implementation. It is difficult to speak with a single voice, much less maintain continuity in policy decisions.

Each of these problems has complicated the task of governing. None can be solved or would be improved in the long run by the proposed amendment. It is possible that the amendment would facilitate short-term decision making and consensus-building, but it would probably do so at the cost of a public and private debate among experts and without the careful consideration of multiple interests by the winning candidate and his principal aides.

It is obvious today that no President can govern alone. He needs a team of loyal but competent analysts and managers to inform and advise him, to protect his interests, and to help him achieve his policy goals. A shortened transition period of two and one-half weeks would not be sufficient to review the qualifications of potential appointees, perform the required background checks and FBI clearances, and have the nominees confirmed by the Senate. Presidents might be tempted to depend increasingly on their campaign staff not only for White House positions but for department and agency heads as well--an awful prospect. The campaign may be a good time for measuring industry and loyalty but it is not the best time to assess the capacity of people to understand complex issues, balance competing viewpoints, or work with those who do not share the candidate's perspectives and goals.

Another possibility would be to operate a personnel office during the election period. The rigors of the campaign, however, would require that it function with a minimum of supervision by the nominee. Moreover, the back-biting among the campaign staff, party officials, and the personnel office would probably be fierce given the ambitions of those who desire appointment and criteria upon which appointments should be made.

A potential solution, at least for senior Cabinet officials, would be for the nominee to announce their names after nomination but before the general election campaign. Whether this would unify the party and/or broaden its electoral coalition is unclear. What is certain, however, is that political considerations would weigh heavily in the initial designation of the team. Any personal problems of any of the nominees would undoubtedly become issues in themselves, diverting the focus of the campaign. Personality factors would become an even more important influence on the vote.

Of course, choosing department heads and getting them confirmed represents only a small number of the personnel decisions that need be made at the beginning of any presidential term. White House involvement in subCabinet appointments is necessary if the administration is to agree on an agenda and successfully get it adopted. A shortened time frame would complicate that involvement by senior presidential aides given the other priorities that demand their attention during these early months in office.

Had the Executive Branch not become so politicized, transitions could be accomplished more quickly, more cheaply, and more easily. Civil servants could educate new appointees, do their bidding, and carry on the necessary functions of government within the policy framework which the new President establishes. Lack of trust and more recently, tradition, now prevents the bureaucracy from providing continuity between administrations at the upper echelons.

In our most recent transitions, large staffs, composed of campaign and partisan loyalists, study, plan, and plot the takeover of the government. Existing structures and personnel are suspect. More often than not, a major objective of the change is to minimize the influence of the permanent government and their

clientele. If a new administration sees the government as the problem, they are not likely to place much faith in the people who were running it.

In addition to educating new appointees, transitions serve another purpose. They help reestablish relationships among institutions. The importance of liaison before and during the first months of a new administration cannot be underestimated. This is the time when campaign debts are due, when personnel requests threaten to overwhelm Congress, when the President appears to have all the perquisites, when the uncertainties of channels of communication and patterns of influence are greatest. Under the circumstances, small favors are apt to be remembered; later on, they are taken for granted.

The contrast between the Carter and Reagan efforts is striking. Whereas Carter's liaison representative was sent to Washington with a secretary and two college interns, Reagan's aide, an experienced liaison official during the Ford administration, had a team of eleven professionals all with Capital Hill experience. Both staffs were quickly inundated with phone calls, messages, and requests for appointments. The Carter transition office was unable to handle the avalanche. The Reagan office was able to do so. In addition, it provided the President-Elect with liaison during the lame-duck session, scheduled meetings for him in his preinaugural visits to Washington, and helped in the confirmation of his Cabinet. By beginning early, recognizing the legislature's needs, and effectively catering to them, the Reagan liaison operation during the transition got the new President off to a really good start with Congress. Such an effort could not have been achieved in two and one-half weeks.

A successful transition takes time. This time factor is accentuated by a new administration's need to make and implement its domestic policy agenda as quickly as possible. Unless Presidents take advantage of their honeymoon period, they will lose the benefits which the victory usually provides: popular good will, unified supporters, disarrayed opponents, and favorable media coverage. Since presidential influence tends to decline over the

course of an administration, they must move or lose their most innovative and controversial policies. The irony is that they must do so when their knowledge of the problems, the solutions, and the government's capacity to act is least.

A President needs to learn quickly. A two and one-half month preparation is short enough. Two and a half weeks is insufficient.

Finally, while contemporary transitions do not guarantee continuity, they are a hedge against abrupt decisions and departures. Claims of an electoral mandate combined with the euphoria of victory can induce precipitous actions by those unaccustomed to governing. A two and a half month hiatus provides at least an opportunity for reflection.

In short, time is necessary for an orderly transition to power. It is necessary for choosing political officials, reestablishing institutional relationships, and coordinating internal agencies, organizations, and processes. It is necessary to study issues, hear opinions, balance interests, and devise options, even when the goals have been articulated during the campaign. If we had more cohesive, policy-oriented parties, shadow governments, and bureaucracies upon which the newly elected officials were willing to depend, it would not be as necessary. But in a personal oriented, pluralistic system that deals with complex policy issues, it is.

The proposed amendment would not upgrade the government's performance or produce better and more contiguous policy decisions. It might speed up those decisions but it might also engender more precipitous responses and actions. In my opinion that is not desirable. Government is not improved if lame ducks become sitting ducks. I urge you to leave this part of our Constitution alone.

ABSTRACT

Stephen J. Wayne

The interim between the election and inauguration is a difficult period for our national government. Hopes rest with the President-Elect, but decisional responsibility remains with the incumbent, at least, for the next two and one-half months. Barring crises, this lame duck will be hard-pressed to generate support for any major policy decision. The danger is that even in crisis, he may not be able to do so, or just as harmful for a democratic society, that he may induce or exaggerate a crisis in order to generate support.

These are the problems that prompted the twentieth amendment and prompt the proposed constitutional change. Beginning the congressional term on November fifteenth and the presidential term on the twentieth would eliminate most of the lame duck period. It would get newly elected officials quickly into place and remove those who were defeated, retired, or appointed by the previous administration. Critical problems could be addressed. Political support could be mobilized. The bureaucracy could be given direction.

It would be nice to think that a simple calendar change could produce such desirable results, that it could quickly transform the judgment of the people into an operational government, providing stability and continuity, making national policy, building support, and implementing campaign promises. But alas--I doubt if it would. In fact, I fear it might aggravate the problem of transition.

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Senator HATCH. Thank you, Professor. Dr. Ornstein.

STATEMENT OF NORMAN J. ORNSTEIN

Dr. ORNSTEIN. Thank you, Mr Chairman. This has been a very active subcommittee in the last few years, and I welcome that. As we approach the bicentennial of the Constitution, I think it is useful and worthwhile that we have a searching assessment of the provisions of the Constitution and the basic tenets of American Government.

It is appropriate and it is necessary, I think, at this point. I am confident that as this subcommittee searches through these tenets, the conclusion will be that no basic change is necessary. We won't find the Constitution as amended currently wanting. And that meets with my own views. I am of the if-it-ain't-broke-don't-fix-it school, and nearly in every regard I don't find the Constitution broken—with one exception, which doesn't have to do with the provision today—I would like to see the 22d amendment repealed, I add that parenthetically.

But short of this change, that would simply erase an earlier amendment, I just don't see the need for tinkering with our basic structures and guidelines as they have been amended over the years.

And I put this new proposal in that category. I don't see anything about the timing of elections, inaugurals, or the arrival of new Congresses that really require change. What's broken and what needs fixing?

In my view in this area, nothing at all. This really strikes me as a solution in search of a problem.

As I have heard the problems discussed today, I have become more convinced of that, candidly.

Do we have a period of uncertainty in the hiatus? Frankly, I don't think so. There is no uncertainty: We know who is President, we know who will be President. There is greater uncertainty probably during the period of August, September, and October when it is not clear who will take on the reins of power. Uncertainty occurs in elections themselves, or, in systems that don't have elections, in the transitions of power.

And when we have these periods in any functioning system, I don't think there is a temptation for foreign powers to try and take advantage of it, because for the United States at least they know what the response will be. Take a look, just as an example, at Russia, which had far greater uncertainty during their transition recently. We at least know during our transitions and after our elections who will be assuming the reins of power.

Did the United States have any temptation to do anything or engage in mischievous acts against the Soviet Union during their period of uncertainty? Of course not. Because we knew that if any outside threat were perceived by the Soviet Union, the reaction would be swift and certain. The same thing is true of the United States.

As I look at the example of the hostage crisis during the transition between the Carter and Reagan administrations, I don't find any evidence that the solution that was achieved would have been any different or certainly any better if the transition had been shorter. There was no particular incentive for the Iranians to hold out until the Reagan administration came in, and the negotiations that went on in fact might have been lengthened and worsened if there had been a shorter transition period.

So I don't see this as a particular problem.

If there is a problem, as I say, it is in the transition of power per se.

As for the Cabinet, I don't believe that we would find Cabinets, even if we shorten the transition, announced in advance. There are political reasons as to why Presidential candidates do not announce their Cabinets in advance. Those political considerations will not be erased by shortening the transition.

In the parliamentary system, which is not comparable to ours in almost any respect, and so their complete lack of a transition I think is not something to use as a comparison, nevertheless we do not find candidates for Prime Minister in Britain, for example, announcing their Cabinets in advance, when there is no transition whatsoever. There are political reasons for not doing so. I think Steve Wayne has mentioned some of them. I don't think it is going to happen unless you include a provision in the Constitution requiring the naming of a Cabinet in advance.

So I don't think that we will get any greater elucidation of what Presidents will do in terms of personnel even if we shorten the transition period.

Now, I must confess that were I appearing before you 50 years ago when there was discussion of the 20th amendment, I probably would have taken a different position. I can easily see the reasons for change that precipitated the 20th amendment that shortened our transition period. A gap of 4 full months between a Presidential election and a Presidential inauguration and the same period

of time between a congressional election and the convening of a new Congress really is too long, and it created theoretical and practical problems, including deaths, in the intervening period, often enough that changing those dates made sense.

In the 50 years since the 20th amendment, I think the system has worked just fine. We haven't had those untimely deaths that have altered the balance of partisan power in Congress or called into question the nature of Presidential succession.

Even if we do, we do have provisions in the Constitution and in statutes to handle all of the questions that might arise.

And during this time, Mr. Chairman, our electoral college and the system surrounding it require a certain set of procedures, including the naming and selection of electors, the process of the electors coming together to vote in December, the process in Congress in January of counting the electoral votes, that is a necessary process under our system and that requires some time.

You can't just look at the transition; you have to look at the whole nature of the election and selection and succession process which we now have that doesn't just end in November and then be followed by the inauguration of a President or the convening of a new Congress in January. Several things occur during the intervening period in November and December. Those are necessary things under our system, and unless we want to change the electoral college in fairly dramatic ways, you need time to let those things work out.

Mr. Chairman, at the American Enterprise Institute, a number of people have put together a small publication called "After the People Vote, Steps in Choosing the President," which goes into all of these transition steps and also answers the questions that arise should a problem occur during a transition. I would like to leave this with you, and, if there is no objection, you might want to put this in the record of the hearing.

Senator HATCH. Without objection, we will, and I am appreciative of your bringing it with you. Thank you.

[The following was received for the record:]

American Enterprise Institute

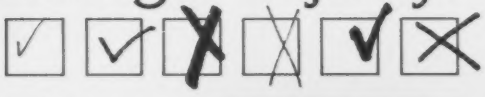
After the People Vote

Steps in Choosing the President

Edited by Walter Berns

What if two slates of electors claim a majority?

What if no presidential candidate gets an electoral college majority?



What if a presidential candidate dies before the electoral vote is cast??????

WHAT IF A CANDIDATE TELLS HIS ELECTORS TO VOTE FOR ANOTHER CANDIDATE??????????

What if an elector casts a vote in violation of his pledge?

After the People Vote
Steps in Choosing the President

Edited by Walter Berns

American Enterprise Institute for Public Policy Research
Washington and London

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Contents

Preface

1 Introduction 1

2 November 6: The Appointment of Presidential Electors 5

The Authority Governing the Appointment 5
Who Resolves Disputed Elections? 6
The Nomination and Binding of Presidential Electors 7

3 December 17: Presidential Electors Vote 10

4 January 6: Congress Counts the Electoral Votes 12

Who Counts? 12
Who Counts What? 12
If No Majority? 13
The House Chooses a President 14
The Senate Chooses a Vice President 15

5 January 20: If No One Has Been Chosen to Assume Office 16

6 Death or Resignation of a Major Party Candidate 18

7 Conclusion 21

Appendix A: Provisions in the Constitution for Presidential Succession 22

Appendix B: Statutory Provisions 25

Appendix C: Nomination and Binding of Presidential Electors 33

Appendix D: 1825 Precedents 35

Appendix E: Party Rules 38

Appendix F: Allocation of Electoral Votes among the States, 1984 39

Preface

It is always possible that an independent candidate for the presidency will deprive one or the other of the major party candidates of an electoral college majority. In 1980, when the pre-election polls showed John Anderson to have substantial popular support, this possibility gave rise to a number of journal articles purporting to describe what might happen "if nobody wins." Some of these were highly imaginative, and not all of them, sober or imaginative, were accurate in all their details. For example, in an *Atlantic Monthly* piece, Laurence H. Tribe, a well-known constitutional lawyer, and Thomas M. Rollins, suggested that Congress might, as it did in 1876, appoint a commission to resolve electoral disputes. In 1887, however, Congress passed a law, still in force, to prevent a recurrence of the 1876 episode. Mistakes of this sort and the unavailability of an authoritative document on the subject led us, all political scientists associated with the American Enterprise Institute, to write this statement—or guide—and offer it to the press and the general public. Because the system described depends on the interactions of the Constitution, federal and state statutes, and party and parliamentary rules, this study should be especially interesting to students enrolled in courses on the American political system.

The following persons contributed to this work or offered their counsel: Ann Diamond, Robert Goldwin, Evron Kirkpatrick, Michael Malbin, Thomas Mann, Norman Ornstein, Howard Penniman, Austin Ranney, Richard Scammon, and William Schambra.

Walter Berns
Washington, D.C.

1
Introduction

We have avoided crises of succession in this country in no small part because the electoral college amplifies pluralities in the popular vote. This amplification gives us clear winners in spite of the "photo-finishes" in the popular vote that have characterized many of our presidential elections. Nevertheless, it is always possible that a third-party candidate, by winning a state or two, may prevent either of the major party candidates from winning an electoral college majority. Recent changes in the law may well increase the number of third-party candidates: court decisions have made ballot access easier, and the Federal Election Campaign Act ensures public funding, in advance of an election, for any minor party that received at least 5 percent of the vote in the previous presidential election.

Third parties have not fared well in America because, in part, the voting procedure of the electoral college deflates the strength of minor parties and inflates the margin of victory of the winning party. By state law, all electoral votes (except Maine's) are awarded on a winner-take-all basis to the candidate who captures a popular plurality within that state. To have any electoral effect, then, a party must capture pluralities within states. A third party with an evenly spread national appeal, but lacking plurality support within any state, may find itself polling more than 20 percent of the popular vote without winning a single electoral vote. Millard Fillmore and the Know-Nothings learned this when they polled 21 percent of the popular vote in 1856, but received only 2 percent of the electoral vote; similarly, William Howard Taft was the choice of 23 percent of the voters in 1912 but of only 1.5 percent of the electoral college.

Regional third-party challenges fare somewhat better in the electoral college, if only because they may win some states. In 1968, in the most successful third-party bid of the past half-century, George Wallace captured forty-six electoral votes, but the electoral college still operated to contain and deflate his challenge. After winning 13.5 percent of the popular vote, he captured only 8 percent of the

electoral vote; some 4.1 million Wallace votes outside the states he carried had been "wasted."

The electoral college's deflation of votes for a third party imposes a psychological burden on its campaigns: somehow, voters must be persuaded that they would not be throwing away their votes, while the two major parties—and the history of third-party efforts—insist that the voters would be doing just that. Even Wallace's full-scale national effort failed to overcome this burden: he watched his support fade from a high of 23 percent, in a September opinion survey, to an actual popular vote of 13.5 percent, at least in part because of the wasted vote argument.

Wallace's express purpose had been to win enough electoral votes in that very close race to block a majority for Nixon or Humphrey in the electoral college. Then he planned to trade his electoral votes for policy concessions from one or the other of the major parties before the electoral college voted. It was feared, however, that the only result of his efforts would be to throw the election into the House of Representatives. In any event the strategy of deadlocking the vote in the electoral college is a ticklish one: a third party not only must capture some states, but also must be careful not to draw votes so that one of the two major candidates is the beneficiary of a landslide. Because of the unit-rule method of awarding state votes, the winner of the plurality of the national popular vote usually receives an amplified majority of the electoral votes. For example, John Kennedy won only 49.7 percent of the popular vote in 1960, but he won 56.4 percent of the electoral votes, even though Harry F. Byrd won fifteen electoral votes (eight in Mississippi, six in Alabama, and one in Oklahoma). This rule operates even when third-party challenges are strong and thus frustrates the strategy of throwing the election into the House. In the face of George Wallace's challenge in 1968, for example, Nixon received only 43.4 percent of the popular vote, but 55.9 percent of the electoral vote; and in 1980, when John Anderson won 7 percent of the popular vote, Ronald Reagan's 51 percent was translated into 91 percent of the electoral vote. In 1912—when Theodore Roosevelt mounted the most successful third-party challenge of this century—Woodrow Wilson eked out 42 percent of the popular vote but won 82 percent of the electoral vote. As a result of the amplified plurality rule, contingency elections are almost never necessary—indeed, none has been necessary since the election of 1824, which was held before the emergence of the unit rule and the two-party system.

Nevertheless, it is possible that a third party could succeed in 1984 or any other year where others have failed. The purpose of

this guide is to set down, as succinctly as possible, the constitutional, statutory, and parliamentary rules that will govern, or otherwise affect, the choice of a president and vice president if the election of November 6, 1984, produces no clear majority in the electoral college. The discussion will focus on the four dates in 1984 significant to this choice:

- November 6, when, by federal statute, electors will be chosen or "appointed" (see provision for "Time of appointing electors," appendix B, p. 25)
- December 17, when the electors will meet in their respective states and give their votes for president and vice president (see provision for "Meeting and vote of electors," appendix B, pp. 26–27)
- January 6 (or 7) when the electoral votes are counted before a joint session of the House and Senate (see provision for "Counting electoral votes in Congress," appendix B, pp. 28–30)
- January 20, when, under Amendment XX of the Constitution (see appendix A, pp. 23–24), the president-elect, if there is one, and the vice president-elect, if there is one, will take office

A further word is required about two of these dates. Throughout this guide, we have referred to January 6 as the day when Congress will count the electoral votes and to January 20 as the day when the president and vice president will take office. In 1985, however, January 6 and January 20 fall on Sundays, which, since the adoption of Amendment XX in 1933, has happened only once, in 1957. In that year the problem was resolved as follows: Senate Concurrent Resolution 1, adopted unanimously (and, apparently, without debate) on January 4, 1957, fixed 1:00 P.M. on Monday, January 7, as the time the Senate and House would meet in joint session to open and count the electoral votes. They did so meet and counted the votes and declared the winners by the usual procedures. Presumably, Congress will act similarly in 1985.

The date and time for the ending of the president's and vice president's terms are fixed in the Constitution, however, and cannot be changed by mere act of Congress. The following account of how this situation was handled in 1957 is taken from the *Congressional Quarterly Almanac, 1957*:

> President Eisenhower and Vice President Richard M. Nixon began their second terms in office after a private, three-minute swearing-in ceremony at the White House Jan. 20 and a public oath-taking at the Capitol Jan. 21. . . . Only about 80 persons, mostly relatives, close friends and high-ranking White House officials, witnessed the Jan. 20 cere-

> mony. The double oath-taking was deemed necessary because the constitutional inaugural date fell on a Sunday. On orders from the President, no newsmen, radio or television stations were permitted to record the private ceremony. Only a Navy Department photographer photographed the event.[1]

We can expect the principals of 1985, whoever they are, to follow this Eisenhower-Nixon precedent.

Note

1. *Congressional Quarterly Almanac, 1957* (Washington, D.C.: Congressional Quarterly Inc., 1957), p. 43.

2

November 6: The Appointment of Presidential Electors

The Authority Governing the Appointment

Although the more than 80 million citizens who vote on November 6 will rightly think that they are deciding who shall be president, only 538 persons are, under Article II and Amendment XXIII of the Constitution, entitled to vote directly for president and vice president (see appendix A, pp. 22, 24). Under prevailing state laws, these 538 electors will be chosen by popular vote of the people of the states and of the District of Columbia. Except in Maine, they will, under these state laws, be chosen on a general-ticket (or winner-take-all) basis. The winning electors (or slate of electors) need capture only a plurality of the popular votes within each state.[1]

How states choose their electors is, under Article II, section 1, paragraph 2 of the Constitution, determined by state legislatures (see appendix A, p. 22). Congress may, by legislation, oversee the conduct of presidential elections, and the Constitution (whose rules may be enforced by the judiciary) has a good deal to say about voter eligibility in those elections. The Constitution does not, however, require presidential elections—or, more precisely, it does not require that electors be chosen by popular vote of the people. The authority of the states to appoint electors was recognized by the Supreme Court in 1892.[2] To repeat: by state law, electors in all the states are chosen by popular vote, and (except in Maine) these popular votes are aggregated on a state-wide basis. This means that the states are authorized to change this system of choosing electors. They may, following the example of Maine, divide themselves into presidential-elector districts and aggregate the votes within each district (thus making it possible for the electoral vote of a state to be cast for more than one presidential and vice presidential candidate); they

may empower the governor to appoint electors; or they may authorize the legislature to appoint them.

As pointed out above, national law permits a state to change its method of selecting electors as late as the day before regularly scheduled presidential elections. There is no reason, however, except in the case of an extraordinary emergency, for any state legislature to assume the power to appoint the electors or to grant it to the governor or any other person or group. Electors have been popularly elected since the Civil War. In fact, South Carolina was the only state after 1824 whose legislature chose the electors, which it did through 1860. Like Maine, states may adopt the once popular practice of selecting all but two electors from congressional districts. States making such a change, however, would have to do so early enough to allow the parties to nominate a potential elector in congressional districts. The prospects of this in 1984 are remote.

Who Resolves Disputed Elections?

Any disputes concerning the appointment of electors—for example, disputes about which slate of electors has received a plurality of the popular votes cast on November 6, 1984—will be resolved by the states themselves. A federal statute provides that the persons designated as electors by the states will be acknowledged by the Congress to be electors and eligible to vote on December 17, 1984, for president and vice president under the following conditions:

- if a state has a law governing the "determination of any controversy or contest" concerning the election of any or all of its presidential electors
- if that law had been enacted "prior to the day fixed for the appointment of the electors" (November 6 in 1984)
- if the determination of that controversy or contest was made at least six days "before the time fixed for the meeting of the electors" (six days before December 17, 1984, or December 11)

This means that the votes cast on November 6 are counted by state election officials and that any controversies about the casting or counting of these votes are resolved by state officials operating under state laws. (See provision for "Determination of controversy as to appointment of electors," appendix B, pp. 25–26.)

The federal law authorizing the states to resolve election disputes, enacted in 1887, was intended to prevent a recurrence of the events that followed the disputed Hayes-Tilden election of 1876. When Congress met to "count" the electoral votes after that election,

it was confronted with two sets of electors—one set voting for Hayes and the other for Tilden—from each of four states. The choice of a president turned on the issue of which votes were to be accepted and counted. Unable to agree, Congress, by an act approved by the president on January 29, 1877, almost three months after the election of electors, appointed a fifteen-member Electoral Commission. In due course and by a strictly partisan vote of 8–7, the commission decided in favor of the Hayes electors, thus enabling Hayes to be elected president by a margin of one electoral vote.[3] By enacting the law of 1887, Congress decided that in the future any such "controversy or contest" would be resolved by the states and that the determinations made by the states "shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution."

The Nomination and Binding of Presidential Electors

As pointed out earlier, the presidential electors of each state are selected by procedures stipulated by its legislature. This section will examine three aspects of these procedures: (1) how candidates for presidential electors are nominated, (2) whether the names of the individual elector candidates are printed on the ballots in November, and (3) whether the persons elected as presidential electors are bound by law to vote in the electoral college for the national nominees of their parties.

The procedures in each of the states are summarized in the table in appendix C (pp. 33–34). This table shows considerable variation among the states in their manner of nominating candidates for presidential electors. Twenty-eight states stipulate that each party's candidates for electors be chosen by state party conventions; five states and the District of Columbia require nomination by state or district party central committees; two require nomination by direct primaries; and twelve let the parties use whatever methods they wish.

In addition, there is a smattering of other methods: in California the Democrats choose their elector candidates by having each Democratic nominee for the U.S. House of Representatives designate one elector candidate and each of the two most recent Democratic nominees for the U.S. Senate designate one elector candidate. For California Republicans, the party's most recent nominees for the state constitutional offices and for the U.S. Senate, the party's leaders in each house of the state legislature, and various leaders of the state party organization select the elector candidates. In Pennsylvania the national presidential nominee of each party names the elector candidates on his party's ticket. In Wisconsin each party's holdover

members of both houses of the legislature together with its candidates for the contested legislative seats constitute the convention that chooses the elector candidates.

Forty states and the District of Columbia use the presidential short ballot, on which the names of the elector candidates do not appear. The ballot shows each national party's presidential and vice presidential candidates. The voter votes directly for one pair, and that vote is taken as a vote for all the elector candidates on that party's slate.

Finally, are the presidential electors bound by law to vote in the electoral college for the presidential and vice presidential nominees who headed the slates on which the electors were elected? Thirty states have no such requirement; fifteen states and the District of Columbia say that the electors are bound to vote for the national nominees heading their slate but provide no penalty for electors who do not; and only five states—New Mexico, North Carolina, Oklahoma, South Carolina, and Washington—stipulate penalties for electors who violate their pledges. Three types of voting behavior are possible for electors: (1) the "faithful elector" is pledged by state law or by state party resolution to vote for his party's presidential and vice presidential candidates and casts his electoral vote accordingly; (2) the "faithless elector" is pledged in the same way but casts his electoral vote for others; and (3) the "unpledged elector," who is not pledged by law or party resolution to vote for any particular candidates, and is free to vote for anyone he chooses.

The likelihood that a significant number of electors will violate their pledges is very small. From 1789 through 1980 only fourteen unpledged electors have been chosen, and only eight electors have violated their pledges (one each in 1796, 1820, 1948, 1956, 1960, 1968, 1972, and 1976). None of the eight faithless electors were legally penalized for violating their pledges, though some suffered damage to their political reputations and careers. Because only eight of the more than 16,000 electors chosen since the first election have not honored their pledges, the faithless elector phenomenon is an occasional curiosity rather than a perennial problem.

Procedures for nominating candidates for presidential electors or for slates headed by independent or minor party presidential candidates also vary by state. Statutes pertaining to independent candidates generally require the names of the electors to be included on the nomination petition, thus giving that candidate considerable discretion in the choice of presidential elector nominees.

Whether an independent candidate is therefore in a better position than a major party candidate to dictate how his electors

vote is not at all clear. In 1968 it was reported that George Wallace had obtained affidavits from all of his electors, in which they promised to vote for Wallace "or whomsoever he may direct" in the electoral college. Since Richard Nixon won a majority in the electoral college, the Wallace pledges were never put to a test.

The Supreme Court in *Ray* v. *Blair* upheld the legality of pledges required by a political party from candidates for the office of presidential elector.[4] The Court did not, however, directly address the constitutional status of presidential elector pledges. It remains to be seen whether the courts will uphold the contractual relationship between presidential candidates and their electors. At present the electors retain their constitutional status of free agents, meaning that presidential candidates may advise their electors but may not compel them to vote in a specified manner.

Notes

1. In Maine, each of the two congressional districts chooses one elector, and two are elected at large; this means that the state's four electoral votes will be cast for one candidate or three will be cast for one candidate and one for another candidate.

2. The case, McPherson v. Blacker, 146 U.S. 1; 13 S. Ct. 3 (1892), dealt with the various methods of choosing electors that the states so far had adopted. On state authority respecting the methods of choosing presidential electors, see also Burroughs v. United States, 290 U.S. 534, 544; 54 S. Ct. 287, 289 (1934). On congressional authority to regulate voting in presidential elections—if there are presidential elections—see, for example, Oregon v. Mitchell, 400 U.S. 112; 91 S. Ct. 260 (1970), and Williams v. Rhodes, 393 U.S. 23; 89 S. Ct. 5 (1968). Only Justice Douglas has cast doubt on the unrestricted authority of the states to determine how electors shall be chosen. Speaking for himself alone in Williams v. Rhodes (393 U.S. at 38; 89 S. Ct. at 14), he said: "It is unnecessary in this case to decide . . . whether states may select [electors] through appointment rather than by popular vote, or whether there is a constitutional right to vote for them."

3. In Wichita Falls, Texas, between Grant and Garfield streets, and running parallel with them, there is both a Tilden Street *and* a Hayes Street, which suggests a fine sense of historical propriety, or a sharply and equally divided city council at the time this section of the city was being planned, or a doubt as to how the Electoral Commission would decide.

4. Ray v. Blair, 343 U.S. 214 (1952).

3

December 17: Presidential Electors Vote

Because most electors remain free, there is a good deal of room for bargaining between November 6 and December 17—if, that is, no candidate's performance on November 6 produces a majority in the electoral college. For example, if a third-party candidate wins a plurality of the popular votes in one or more states in 1984, his electors could cast their ballots for one or the other of the major party candidates (or anyone else). In 1968, Hubert Humphrey could have decided to ask his electors to vote for Richard Nixon (if Nixon had lacked an electoral college majority) rather than see Nixon bargain with George Wallace. Thus, the electoral college could well produce a winner on December 17 that was not apparent on election day, November 6.

On December 17, the electors appointed or chosen on November 6 will meet in their respective states to cast two ballots, one for president and one for vice president. Although unknown to most of the public, their names will have been certified by the governors to an official of the federal government, the administrator of general services. A federal statute requires that this be done "as soon as practicable" after November 6. (See provision for "Credentials of electors . . . ," appendix B, p. 26.) Thus, shortly after November 6, an official of the national government will know the names of the 538 persons who will meet in their respective states and in the District of Columbia on December 17 and vote for president and vice president. He will also know the number of popular votes cast for the successful, as well as for the unsuccessful, candidates for electors.

The persons whose names appear in the certificates sent by the governors to Washington will be the electors eligible to vote for president and vice president on December 17. As discussed in chapter 2, any "controversy or contest" concerning the identity of these eligible electors will have been resolved by the states acting

under state laws. The votes they cast, one for president and one for vice president, will be recorded in certificates, which will be sealed and sent to the president of the Senate in Washington. (See provisions for "Certificates of votes for President and Vice President," "Sealing and endorsing certificates," and "Disposition of certificates," appendix B, p. 27.) At least one of the two votes cast by each elector must, of course, be cast for a person who is "not an inhabitant of the same state with [him]self." It is this constitutional provision that has led to the practice of political parties (and independent candidates) nominating a candidate for president from one state and a candidate for vice president from another state. The Constitution does not require the president and vice president to be inhabitants of different states; it merely requires electors to cast at least one ballot for someone from another state. Thus, if in 1980 the Republican party had nominated Gerald Ford to run with his fellow Californian, Ronald Reagan (assuming neither changed his official residence to another state), only California electors would have been presented with a problem, and more precisely, only California Republican electors. They would have had to vote for Reagan and, say, Jack Kemp, or, say, Jack Kemp and Gerald Ford; they would not have been permitted to vote for a ticket comprising *both* Reagan and Ford.

4

January 6: Congress Counts the Electoral Votes

Who Counts?

The certificates containing the votes cast by the 538 electors on December 17 will be opened by the president of the Senate on January 6, 1985, before a joint session of the new House and the new Senate, the members of which (under Amendment XX) will themselves have been sworn in on January 3. (See appendix A, pp. 23–24.) The certificates are identified and counted by tellers appointed by the House and the Senate, and announced by states in alphabetical order. According to Amendment XII of the Constitution (see appendix A, p. 22), the person having the greatest number of votes for president, if such number is a majority of the whole number of electors appointed, shall be president; and the person having the greatest number of votes for vice president, if such number is a majority of the whole number of electors appointed, shall be vice president. Assuming each state "appoints" the number of electors to which it is entitled, the total of electors will be 538 and the majority required for election will be 270.

Who Counts What?

The tellers read "certificates and papers purporting to be certificates of the electoral votes." The president of the Senate calls for objections, if any, to these certificates or papers as they are read.[1] The statute provides that objections must be made in writing, must state "clearly and concisely, and without argument, the ground thereof," and must be signed by at least one member of the House and one member of the Senate. When objections are filed, both houses retire to separate sessions to decide whether the questioned certificates are counted or rejected. Under the statute, both houses have to reject a challenged electoral ballot for the objection to prevail. The statute

says that Congress shall not reject any "electoral vote or votes from any state which shall have been regularly given by electors whose appointment has been lawfully certified," but it does not define "regularly given." (See provision for "Counting electoral votes in Congress," appendix B, pp. 28–30.)

These procedures were used for the first time on January 6, 1969. Representative James O'Hara (Democrat, Michigan), Senator Edmund Muskie (Democrat, Maine), thirty-seven other representatives, and six other senators objected in writing to the vote cast by Dr. Lloyd Bailey, a North Carolina elector who had been on the Republican slate but who voted for Wallace/LeMay rather than for Nixon/Agnew. By roll call votes, both houses rejected the challenge and upheld the vote cast by Bailey.

It might be concluded from this example that a "regularly given vote"—which is a vote the Congress must count—means no more than a vote cast by an elector whose name had been certified by the governor of the state to the administrator of general services. Under this interpretation a list of certified electors from each state will on January 6 be in the hands of the Congress, whose only function would be to see that the votes were cast by the electors whose names appear on those lists. The term "regularly given" could, however, be interpreted more expansively by a future Congress, especially a Congress confronted with faithless electors whose votes, unlike Bailey's, would determine the outcome of an election. The term does, after all, appear in a statute written by Congress. But if Congress were to refuse to count a vote cast by a faithless elector—for example, a vote cast for Anderson by an elector pledged to vote for Reagan—it would be interpreting more than statutory language: it would be making a constitutional judgment.

If the November 6 election is disputed and Congress receives more than one list of electors, and if that dispute had not been resolved according to the laws of the state, then the two houses, acting concurrently, will decide who are the eligible electors. (See the provision for "Determination of controversy as to appointment of electors," appendix B, pp. 25–26.) If they disagree, the votes cast by the persons whose names appear on the list signed by the governor of the state will be counted.

If No Majority?

Once the Congress has met and counted and certified the electoral votes, Amendment XII of the Constitution sets the basic provisions

for decision if no presidential candidate has received the requisite majority:

> From the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice.

The House Chooses a President

Should a presidential election be thrown into Congress for decision, there are precedents, rules, laws, and procedures for making decisions—but also much room for the particular Congress to determine its own format and rules.

Provisions in Amendments XII and XX of the Constitution determine the basic role of the House of Representatives in this process. With regard to the mechanics of the House decision, the House, as in other matters, sets its own rules and procedures. The precedents set by the House in February 1825 in deciding the election of 1824 provide some guidance. (See appendix D, pp. 35–37.) The House could follow these precedents, or if it wished, ignore them and draw up a new set of procedures. The new procedures would be unlikely to differ greatly from the 1825 set, except in one key respect—in 1825, the old, or lame-duck, House made the presidential selection. Amendment XX changed the date of convention of the new Congress from March 20 to January 3, thus seating the new Congress before the January 6 statutory date for counting the electoral votes in Congress. Congress could conceivably set this statutory date back, empowering the old Congress to make the presidential decision. That is most unlikely, however, particularly since the record of deliberation on Amendment XX reflects a clear intention to have this decision in the hands of the new Congress.

Of the specific precedents from 1825, one is of particular significance: the requirement of a majority of a state's whole delegation to vote for a candidate in order for the state vote to be cast. If no candidate got a majority, the state was recorded as divided, and no vote was cast. In the Ninety-eighth Congress, twenty-nine state delegations have Democratic majorities, eleven have Republican majorities, and ten are evenly divided between the two parties. It would require few House seats shifting from one party to the other in the

1984 elections, or only a few votes by House members to be cast for a third-party candidate in state delegations, to create enough divided states to prevent any presidential candidate from getting the twenty-six state votes needed to win.

The Senate Chooses a Vice President

Amendment XII of the Constitution also sets the basic provisions for decision if no vice presidential candidate has received the requisite majority of electoral votes: "from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice." The Senate has selected a vice president once, in 1837, when President-elect Martin Van Buren's running mate, Richard Johnson, because of a personal scandal, received one fewer than a majority of electoral votes. He was, however, elected by the Senate.

Unlike members of the House, senators vote as individuals, not as part of a state delegation, and they choose between the top two candidates, not the top three. Moreover, the requirements for a quorum in the Senate—two-thirds of the full Senate, or, at present, sixty-seven senators—are more stringent than in the House, where only one member from two-thirds of the states is needed. Thus, a boycott by members of the minority party in the Senate could prevent a choice of vice president. Democrats could boycott in the Ninety-eighth Congress, for example, where Republicans have fifty-four senators, three more than required for a majority but thirteen fewer than needed for a quorum.

Note

1. The president of the Senate is, of course, vice president of the United States, and it sometimes happens that he is required to supervise the counting of electoral votes and to announce the results of an election in which he was himself a candidate. Both Richard Nixon (January 6, 1961) and Walter Mondale (January 6, 1981) announced their own defeats, one for the presidency and the other for the vice presidency. The last president of the Senate to be in the happy position of announcing himself to be president-elect was Martin Van Buren in 1837.

5

January 20: If No One Has Been Chosen to Assume Office

Amendment XX of the Constitution fixes the end of the terms of the president and vice president at noon on January 20. If a president has been chosen by that time, he will be sworn in. If a president has not been chosen, but there is a vice president-elect, the vice president becomes acting president until the House selects the president in the manner described earlier.

The Presidential Succession Act of 1948 comes into play under any of the following conditions:

- if the House fails to choose a president and the Senate fails to choose a vice president
- if the president-elect and vice president-elect both die
- if both are discovered after January 6 to be constitutionally unqualified to hold office[1]

(See provision for "Vacancy in offices of both President and Vice President; officers eligible to act," appendix B, pp. 31–32.)

The next in line after the vice president to serve as acting president is the speaker of the House, who in turn is followed by the president pro tempore of the Senate. They may act as president, however, only if they meet the legal requirements for the presidency, spelled out in Article II of the Constitution. In addition, Article I of the Constitution bars members of the House and Senate from holding any other federal office. The Presidential Succession Act specifically interprets this to mean that the speaker or president pro tempore must resign from the House or Senate to serve as acting president.

Since the Presidential Succession Act requires the acting president to relinquish that position as soon as a president or vice president is chosen, the speaker and president pro tempore might well choose not to resign from Congress to become acting president. If that

should happen, the process then moves on to qualified cabinet officers in the following order: secretaries of state, Treasury, and defense, attorney general, secretaries of interior, agriculture, commerce, labor, health and human services, housing and urban development, transportation, energy, and education. Since cabinet officers stay in office until they resign or are discharged by the president or acting president, the person who would became acting president under this set of contingencies would be a cabinet officer from the previous administration.

Only officers confirmed by the Senate (not, for example, an acting secretary) and not under impeachment by the House may become acting president. Confirmed cabinet officers will be passed over if they fail to qualify as president, and subsequent qualification of the officer thus passed over (such as by turning thirty-five or by reaching his fourteenth year of residency in this country) would not result in a change of acting presidents. A decision by a qualified speaker or president pro tempore to resign from Congress would, however, displace the former cabinet officer and make the speaker or president pro tempore the acting president until a vice president or president is named or until the expiration of the presidential term, whichever comes first.

Note

1. Presidents must be natural-born citizens of at least thirty-five years of age and have lived in the United States for at least fourteen years.

6

Death or Resignation of a Major Party Candidate

If a candidate nominated by a political party dies or resigns before the date fixed for the choice of presidential electors (November 6, 1984), the national committee of the affected party will meet and choose a new presidential or vice presidential candidate. Article III of the Charter of the Democratic Party and Rule 28 of the Rules of the Republican Party permit the national committees so to act. (See appendix E, p. 38.) In 1912, both President William H. Taft and Vice President James S. Sherman were renominated at the June Republican convention. Vice President Sherman died October 30, and the Republican National Committee chose another candidate, but not until after the November election. The committee substituted Nicholas Murray Butler, and the eight Republican electors cast their ballots for him in the December voting. In 1972, Senator Thomas Eagleton was nominated July 13 as the candidate for vice president at the Democratic national convention. Stories began circulating almost immediately about Senator Eagleton's problems of mental strain some years before and his three hospitalizations. At first, presidential nominee McGovern supported Eagleton's continuation on the ticket, but circumstances made such support less and less tolerable. Senator Eagleton finally withdrew at the end of July, and on August 8 the Democratic National Committee substituted R. Sargent Shriver as the new nominee for vice president.

If the death or resignation occurs between November 6 and December 17, the day the electors cast their ballots, the national committee of the party affected would probably proceed as it would if the candidate died or resigned before November 6—assuming there is time to convene the committee. In any event, no legal problem would arise because (leaving aside the question of electors bound by state law to cast a ballot for a named candidate) the electors, under the Constitution, are free to vote for whomever they choose.

If, to deviate from chronological order, the death or resignation occurs between January 6 and January 20, 1985, the case will be

governed by Amendment XX of the Constitution. Section 3 of the Amendment reads:

> If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. . . . and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected. . . .

Thus, if both the president-elect and the vice president-elect were to die during this period, the law enacted by Congress under the authority of this amendment (the Presidential Succession Act) would take effect. (See provision for "Vacancy in offices of both President and Vice President; officers eligible to act," appendix B, pp. 31–32.)

There is some question concerning the consequences if the death occurs between December 17 and January 6, 1985. Will there be a president-elect and a vice president-elect during this period? If so, Amendment XX will govern the case, and, if the president-elect dies, the person receiving the majority of electoral votes cast for vice president—or, if no one receives a majority, the person chosen by the Senate on January 6 to be vice president—will become president. In either case, that person will be vice president-elect, and, as Amendment XX says, if, at the time fixed for the beginning of the terms of the president, the president-elect shall have died, "the Vice President-elect shall become President."

There will probably be no president-elect, however, until the electoral votes are counted and announced by Congress on January 6. The electors will have voted, true, and the country will know—or will think it knows—whether anyone has received a majority, but those votes will be under seal and will not be known officially until they are opened by the Congress. The president of the Senate will "thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States. . . ." (See provision for "Counting electoral votes in Congress," appendix B, pp. 28–30.) Moreover, the same statute also requires the president of the Senate, when opening "the certificates and papers purporting to be certificates of the electoral votes" of each state in turn, to "call for objections, if any." The statute then specifies the manner of dealing with those objections. Only after they have been dealt with, or only after all the questions concerning the validity of the certificates have been resolved, may the president of the Senate "announce the state of the vote." It follows, therefore, that only then will there be a president-elect and a vice

president-elect. Amendment XX cannot govern the case of a candidate's death occurring between December 17 and January 6; it can only be governed by Amendment XII.

The death or resignation of a candidate during this period would be of political concern only if the candidate had been the choice of a majority of electors, or if no candidate had won a majority. In either case the choice of a president would devolve upon the House (or, in the choice of a vice president, upon the Senate). This conclusion rests on the following clause of Amendment XII: "and if no person [living] have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President." Thus, to be concrete, if the Republican, Democratic, and some third-party candidate all win electoral votes, and if the one winning a majority were to die or resign between December 17 and January 6, the House would, on January 6, choose a president from the other two.

Section 4 of Amendment XX provides that

> Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Unfortunately, Congress has not enacted such a law. The Presidential Succession Act, authorized by section 3 of Amendment XX, meets the cases of the death of a president or president-elect and of a vice president or vice president-elect, but not the cases of the death "of any of the persons" from whom the House and Senate may choose a president or vice president. In enacting the Presidential Succession Act, Congress may have thought it was providing for the case of a death of any of the persons from whom the House may choose a president and the Senate a vice president. If the reading here given to the terms "President elect" and "Vice President elect" is correct, however, that act does not cover the case.

Congress could, of course, choose to ignore the winning candidate's death and proceed to name him president-elect. Then, the president-elect having died, the vice president-elect would, under Amendment XX, become president. Congress might reason that this outcome is in accordance with the popular will or, at least, does not thwart it.

7
Conclusion

In a democracy, it can be expected that the people, and more precisely, a majority of the people, will be able to choose the persons holding the highest political offices. Although not by constitutional design, this is what in fact happens in the United States. Only when the electoral college fails to produce a majority does the choice of a president devolve upon some other body. That has not happened since 1825, and only once in our modern history (1888) has the candidate winning the majority of the popular vote failed to win a majority of the electoral vote. As the proponents of direct election are quite right to remind us, there is no guarantee that the system will continue to produce results in accord with the will of a simple majority of the voters. Nevertheless, on the basis of the record, the friends of majority-rule democracy have no reason to complain of the method by which this country chooses its presidents.

A country governed by law can also be expected to have provided legally binding rules governing unusual cases of succession to the highest offices, and this, too, the United States has done. That much should be made clear by this guide. The various constitutional, statutory, and parliamentary rules elucidated and in some instances interpreted in this study govern almost every conceivable contingency. So long as these rules are followed, this country will not suffer a crisis of succession. Stated differently, adherence to these legally prescribed provisions will produce a president and a vice president with unchallengeable constitutional and legal claims to those offices. The importance of this cannot be exaggerated in a world where the law of succession is often bent to the dictates of force. The friends of constitutional government have no reason to complain of the method by which this country chooses its presidents.

Appendix A

PROVISIONS IN THE CONSTITUTION FOR PRESIDENTIAL SUCCESSION

Article II

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. . . .

Amendment XII

The Electors shall meet in their respective states and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number[1] be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by

ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.][2]—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XX

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d ~~day~~ of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SEC. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SEC. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SEC. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives

may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them. . . .

Amendment XXIII

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment....

Notes

1. This text of the Constitution is taken from *The Constitution of the United States of America: Analysis and Interpretation*, Senate Document no. 92-82, 92d Congress, 2d session, 1973. This document does, however, contain an obvious (and serious) error: The word "member" appeared in the original. I have substituted the correct word, "number." It should also be noted that in this document the word Vice President is sometimes hyphenated and sometimes not.

2. The part included in square brackets has been superseded by section 3 of Amendment XX.

37-533 O - 85 - 10

Appendix B

Statutory Provisions

The following provisions are to be found in Title 3, Chapter 1, of the United States Code Annotated.

1. Time of appointing electors

The electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.

2. Failure to make choice on prescribed day

Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.

3. Number of electors

The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice President to be chosen come into office; except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives.

4. Vacancies in electoral college

Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.

5. Determination of controversy as to appointment of electors

If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determina-

tion of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

6. Credentials of electors; transmission to Administrator of General Services and to Congress; public inspection

It shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, under and in pursuance of the laws of such State providing for such ascertainment, to communicate by registered mail under the seal of the State to the Administrator of General Services a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by section 7 of this title to meet, six duplicate-originals of the same certificate under the seal of the State; and if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Administrator of General Services a certificate of such determination in form and manner as the same shall have been made; and the certificate or certificates so received by the Administrator of General Services shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection; and the Administrator of General Services at the first meeting of Congress thereafter shall transmit to the two Houses of Congress copies in full of each and every such certificate so received at the General Services Administration.

7. Meeting and vote of electors

The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second

Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct.

8. Manner of voting

The electors shall vote for President and Vice President, respectively, in the manner directed by the Constitution.

9. Certificates of votes for President and Vice President

The electors shall make and sign six certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President and the other of the votes for Vice President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State.

10. Sealing and endorsing certificates

The electors shall seal up the certificates so made by them, and certify upon each that the lists of all the votes of such State given for President, and of all the votes given for Vice President, are contained therein.

11. Disposition of certificates

The electors shall dispose of the certificates so made by them and the lists attached thereto in the following manner:

First. They shall forthwith forward by registered mail one of the same to the President of the Senate at the seat of government.

Second. Two of the same shall be delivered to the secretary of state of the State, one of which shall be held subject to the order of the President of the Senate, the other to be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection.

Third. On the day thereafter they shall forward by registered mail two of such certificates and lists to the Administrator of General Services at the seat of government, one of which shall be held subject to the order of the President of the Senate. The other shall be preserved by the Administrator of General Services for one year and shall be a part of the public records of his office and shall be open to public inspection.

Fourth. They shall forthwith cause the other of the certificates and lists to be delivered to the judge of the district in which the electors shall have assembled.

12. Failure of certificates of electors to reach President of Senate or Administrator of General Services; demand on State for certificate

When no certificate of vote and list mentioned in sections 9 and 11 of this title from any State shall have been received by the President of the Senate or by the Administrator of General Services by the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Administrator of General Services shall request, by the most expeditious method available, the secretary of state of the State to send up the certificate and list lodged with him by the electors of such State; and it shall be his duty upon receipt of such request immediately to transmit same by registered mail to the President of the Senate at the seat of government.

13. Same; demand on district judge for certificate

When no certificates of votes from any State shall have been received at the seat of government on the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Administrator of General Services shall send a special messenger to the district judge in whose custody one certificate of votes from that State has been lodged, and such judge shall forthwith transmit that list by the hand of such messenger to the seat of government.

14. Forfeiture for messenger's neglect of duty

Every person who, having been appointed, pursuant to section 13 of this title, to deliver the certificates of the votes of the electors to the President of the Senate, and having accepted such appointment, shall neglect to perform the services required from him, shall forfeit the sum of $1,000.

15. Counting electoral votes in Congress

Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted

according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the

State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

16. Same; seats for officers and members of two houses in joint meeting

At such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this subchapter, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of 10 o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House.

17. Same; limit of debate in each house

When the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

18. Same; parliamentary procedure at joint meeting

While the two Houses shall be in meeting as provided in this chapter, the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw.

19. Vacancy in offices of both President and Vice President; officers eligible to act

(a) (1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.

(2) The same rule shall apply in the case of the death, resignation, removal from office, or inability of an individual acting as President under this subsection.

(b) If, at the time when under subsection (a) of this section a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President.

(c) An individual acting as President under subsection (a) or subsection (b) of this section shall continue to act until the expiration of the then current Presidential term, except that—

(1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

(2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals.

(d) (1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b) of this section, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secre-

tary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education.

(2) An individual acting as President under this subsection shall continue so to do until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) of this subsection or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

(3) The taking of the oath of office by an individual specified in the list in paragraph (1) of this subsection shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

(e) Subsections (a), (b), and (d) of this section shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) of this section shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify of the President pro tempore, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.

(f) During the period that any individual acts as President under this section, his compensation shall be at the rate then provided by law in the case of the President.

Appendix C

Nomination and Binding of Presidential Electors

State (Number of Electoral Votes)	*Party Elector Candidates Nominated by* PO: Party option CN: Party convention CO: Party committee PM: Party primary	*Electors' Names on Ballot?* N: No Y: Yes	*Electors Bound?* N: No Y: Yes YP: Yes, with penalty
Alabama (9)	PO	N	Y
Alaska (3)	PO	N	Y
Arizona (7)	PM	Y	N
Arkansas (6)	CN	N	N
California (47)	[1]	N	Y
Colorado (8)	PO	N	Y
Connecticut (8)	CN	N	Y
Delaware (3)	CN	N	N
District of Columbia (3)	CO	N	Y
Florida (21)	CO	N	N
Georgia (12)	CN	N	N
Hawaii (4)	CN	N	Y
Idaho (4)	CN	Y	N
Illinois (24)	CN	N	N
Indiana (12)	CN	N	N
Iowa (8)	CN	N	N
Kansas (7)	PO	Y	N
Kentucky (9)	PO	N	N
Louisiana (10)	PO	N	N
Maine (4)	CN	N	Y

(Table continues)

State (Number of Electoral Votes)	Party Elector Candidates Nominated by PO: Party option CN: Party convention CO: Party committee PM: Party primary	Electors' Names on Ballot? N: No Y: Yes	Electors Bound? N: No Y: Yes YP: Yes, with penalty
Maryland (10)	CN	N	Y
Massachusetts (13)	CO	N	Y
Michigan (20)	CN	N	N
Minnesota (10)	CN	N	N
Mississippi (7)	PM	Y	N
Missouri (11)	PO	N	N
Montana (4)	PO	N	N
Nebraska (5)	CN	N	N
Nevada (4)	CN	N	Y
New Hampshire (4)	CN	N	N
New Jersey (16)	CO	N	N
New Mexico (5)	CN	N	YP
New York (36)	CO	N	N
North Carolina (13)	CN	N	YP
North Dakota (3)	CN	Y	N
Ohio (23)	CN	N	Y
Oklahoma (8)	CN	Y	YP
Oregon (7)	PO	N	Y
Pennsylvania (25)	[1]	N	N
Rhode Island (4)	CN	N	N
South Carolina (8)	CO	Y	YP
South Dakota (3)	CN	Y	N
Tennessee (11)	PO	Y	Y
Texas (29)	PO	N	N
Utah (5)	CN	N	N
Vermont (3)	CN	N	N
Virginia (12)	CN	Y	Y
Washington (10)	PO	N	YP
West Virginia (6)	CN	N	N
Wisconsin (11)	[1]	N	N
Wyoming (3)	CN	N	Y

1. See "The Nomination and Binding of Presidential Electors" in chapter 2 for explanation of the procedures in these states.

SOURCE: Thomas M. Durbin and Michael V. Seitzinger, *Nomination and Election of the President and Vice President of the United States* (Washington, D.C., 1980), pp. 321-405.

Appendix D

1825 Precedents

The following rules, reprinted from Hinds's *Precedents of the House of Representatives*, were adopted by the House in 1825 for use in deciding the choice of a president, when, as then, the choice devolved upon the House.

1. In the event of its appearing, on opening all the certificates, and counting the votes given by the electors of the several States for President, that no person has a majority of the votes of the whole number of electors appointed, the same shall be entered on the Journals of this House.

2. The roll of the House shall then be called by States; and, on its appearing that a Member or Members from two-thirds of the States are present, the House shall immediately proceed, by ballot, to choose a President from the persons having the highest numbers, not exceeding three, on the list of those voted for as President; and, in case neither of those persons shall receive the votes of a majority of all the States on the first ballot, the House shall continue to ballot for a President, without interruption by other business, until a President be chosen.

3. The doors of the Hall shall be closed during the balloting, except against the Members of the Senate, stenographers, and the officers of the House.

4. From the commencement of the balloting until an election is made no proposition to adjourn shall be received, unless on the motion of one State, seconded by another State, and the question shall be decided by States. The same rule shall be observed in regard to any motion to change the usual hour for the meeting of the House.

5. In balloting the following mode shall be observed, to wit:

The Representatives of each State shall be arranged and seated together, beginning with the seats at the right hand of the Speaker's chair, with the Members from the State of Maine; thence, proceeding

with the Members from the States, in the order the States are usually named for receiving petitions, around the Hall of the House, until all are seated.

A ballot box shall be provided for each State.

The Representatives of each State shall, in the first instance, ballot among themselves, in order to ascertain the vote of their State; and they may, if necessary, appoint tellers of their ballots.

After the vote of each State is ascertained, duplicates thereof shall be made out; and in case any one of the persons from whom the choice is to be made shall receive a majority of the votes given, on any one balloting by the Representatives of a State, the name of that person shall be written on each of the duplicates; and in case the votes so given shall be divided so that neither of said persons shall have a majority of the whole number of votes given by such State, on any one balloting, then the word "divided" shall be written on each duplicate.

After the delegation from each State shall have ascertained the vote of their State, the Clerk shall name the States in the order they are usually named for receiving petitions; and as the name of each is called the Sergeant-at-Arms shall present to the delegation of each two ballot boxes, in each of which shall be deposited, by some Representative of the State, one of the duplicates made as aforesaid of the vote of said State, in the presence and subject to the examination of all the Members from said State then present; and where there is more than one Representative from a State, the duplicates shall not both be deposited by the same person.

When the votes of the States are thus all taken in, the Sergeant-at-Arms shall carry one of said ballot boxes to one table and the other to a separate and distinct table.

One person from each State represented in the balloting shall be appointed by the Representatives to tell off said ballots; but, in case the Representatives fail to appoint a teller, the Speaker shall appoint.

The said tellers shall divide themselves into two sets, as nearly equal in number as can be, and one of the said sets of tellers shall proceed to count the votes in one of said boxes, and the other set the votes in the other box.

When the votes are counted by the different sets of tellers, the result shall be reported to the House; and if the reports agree, the same shall be accepted as the true votes of the States; but if the reports disagree, the States shall proceed, in the same manner as before, to a new ballot.

6. All questions arising after the balloting commences, requiring the decision of the House, which shall be decided by the House, voting

per capita, to be incidental to the power of choosing a President, shall be decided by States without debate; and in case of an equal division of the votes of States, the question shall be lost.

7. When either of the persons from whom the choice is to be made shall have received a majority of all the States, the Speaker shall declare the same, and that that person is elected President of the United States.

8. The result shall be immediately communicated to the Senate by message, and a committee of three persons shall be appointed to inform the President of the United States and the President-elect of said election.

Appendix E

Party Rules

Charter of the Democratic Party, Article III, Section 1

The Democratic National Committee shall have general responsibility for the affairs of the Democratic Party between National Conventions, subject to the provisions of this Charter and to the resolutions or other actions of the National Convention. This responsibility shall include: . . . filling vacancies in the nominations for the office of President and Vice President. . . .

Rule 28 of the Republican Party

(A) The first meeting of the national committee shall take place within fifteen (15) days after the convening of the national convention, upon the call of the member senior in time of service upon the previous national committee; and thereafter upon call of the chairman, or, in case of vacancy in the chairmanship, upon call of the vice chairman senior in time of service on the national committee; but such call shall be issued at least ten (10) days in advance of the date of the proposed meeting. Provided, however, that if one of the purposes of a meeting of the Republican National Committee is to fill a vacancy in the office of Republican candidate for president or Republican candidate for Vice President, then only five (5) days notice of the purpose, date, and place of said meeting shall be required. . . .

Appendix F

ALLOCATION OF ELECTORAL VOTES AMONG THE STATES, 1984

State	Number of Electoral Votes	State	Number of Electoral Votes
Alabama	9	Montana	4
Alaska	3	Nebraska	5
Arizona	7	Nevada	4
Arkansas	6	New Hampshire	4
California	47	New Jersey	16
Colorado	8	New Mexico	5
Connecticut	8	New York	36
Delaware	3	North Carolina	13
District of Columbia	3	North Dakota	3
Florida	21	Ohio	23
Georgia	12	Oklahoma	8
Hawaii	4	Oregon	7
Idaho	4	Pennsylvania	25
Illinois	24	Rhode Island	4
Indiana	12	South Carolina	8
Iowa	8	South Dakota	3
Kansas	7	Tennessee	11
Kentucky	9	Texas	29
Louisiana	10	Utah	5
Maine	4	Vermont	3
Maryland	10	Virginia	12
Massachusetts	13	Washington	10
Michigan	20	West Virginia	6
Minnesota	10	Wisconsin	11
Mississippi	7	Wyoming	3
Missouri	11	Total	538

SOURCE: Norman J. Ornstein, Thomas E. Mann, Michael J. Malbin, and John F. Bibby, *Vital Statistics on Congress, 1982* (Washington, D.C.: American Enterprise Institute, 1982), table 1–1 ("Apportionment of Congressional Seats by Region, 1910–1980"), pp. 6–7. To reach the number of electoral votes, we have, of course, increased the number of House seats to which each state is entitled by two.

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After the People Vote
Steps in Choosing the President

EDITED BY WALTER BERNS

What if—

- *no presidential candidate gets an electoral college majority?*
- *a third-party candidate has exacted pledges from his electors allowing him to cast their votes as* he *pleases?*
- *two slates of electors claim to have received a majority or plurality of a state's popular votes?*
- *an elector casts his vote in violation of a pledge exacted under state law? party rule?*
- *during the official counting of the electoral votes, a member of the House or Senate objects to the count?*
- *when the choice devolves upon the House of Representatives, a majority of the state delegations are equally divided along party lines?*
- *a presidential candidate dies before the November election? after the November election but before the electoral votes are cast? after the electoral votes are cast but before they are counted? after they are counted but before the winning candidate assumes office?*

Questions like these have puzzled even constitutional scholars. The authors of this guide address these matters and others as they explain the workings of the electoral college and the process of presidential succession.

Walter Berns is John M. Olin Distinguished Scholar in Constitutional and Legal Studies at the American Enterprise Institute.

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Dr. ORNSTEIN. I have some other statements that I would make, Mr. Chairman, about the nature of lameduck sessions, the question of who is in charge in Congress—they are in my prepared statement; I don't think it is necessary to take time on them now.

Let me just sum by saying that I see no particular reason to change the Constitution, an act we should undertake only when the evidence of need for change is overwhelming.

Some of the problems in the transition that Mr. Macy and Mr. Wellford raised in a very persuasive fashion can be dealt with, but short of a constitutional amendment.

Frankly, I think that you could change the budget process in some ways that might alleviate some of the problems of the budget transition, but I don't think you are going to change the temptation for a President who is going to be turning over the reins of power to find ways to make political points or to get some of his policies ingrained in the budget no matter what. This is not a structural problem, it is inherent in the nature of the political system.

And, overall, I see many good reasons, including the value of a reasonable period for Presidential transition—to heal the wounds, to take time for rest, as you suggested yourself, Mr. Chairman—many reasons for maintaining the existing system.

I don't see that this part of the Constitution is broke, and I don't see that there is anything to fix.

[The following was received for the record:]

PREPARED STATEMENT OF NORMAN J. ORNSTEIN

AS WE APPROACH THE BICENTENNIAL OF THE CONSTITUTION, PROPOSALS TO REFORM OUR BASIC DOCUMENT HAVE BEEN INCREASING, INCLUDING PROPOSALS THAT GET INTO SUBSTANTIVE AREAS AND THOSE THAT RELATE TO THE BASIC STRUCTURES OF GOVERNMENT. WE HAVE SEEN THE SENATE VOTE A NUMBER OF TIMES RECENTLY ON POSSIBLE AMENDMENTS TO THE CONSTITUTION AND WE WILL LIKELY SEE MORE VOTES IN THE NEAR FUTURE. WE ARE BUT TWO STATES AWAY FROM A POSSIBLE CONSTITUTIONAL CONVENTION, WHICH MIGHT RESULT IN EVEN MORE ACTIVITY RELATING TO THE ARTICLES AND AMENDMENTS OUR FOUNDING FATHERS AND THEIR SUCCESSORS CRAFTED.

I WELCOME THIS SEARCHING ASSESSMENT OF THE BASIC TENETS OF AMERICAN GOVERNMENT. IT IS ENTIRELY APPROPRIATE AS WE APPROACH THIS LANDMARK 200TH ANNIVERSARY THAT WE EXPLORE THE THEORIES BEHIND THE CONSTITUTION AND THE WORKINGS OF ITS SPECIFIC ELEMENTS. I AM CONFIDENT THAT OUR CONCLUSION WILL BE THAT NO SIGNIFICANT CHANGE IS NECESSARY. WE WILL NOT FIND THE CONSTITUTION AS AMENDED, WANTING. THAT MEETS WITH MY OWN VIEWS. I AM OF THE "IF IT AIN'T BROKE, DON'T FIX IT," SCHOOL. AND IN NEARLY EVERY REGARD, I DO NOT FIND THE CONSTITUTION BROKEN. I MIGHT ADD, PARENTHETICALLY, THAT IF I COULD MAKE ONE CHANGE, IT WOULD BE NOT TO ADD A NEW AMENDMENT BUT TO REPEAL AN EXISTING ONE -- THE 22ND AMENDMENT, THAT LIMITS PRESIDENTS TO TWO TERMS.

BUT SHORT OF THIS CHANGE, THAT WOULD SIMPLY ERASE AN EARLIER AMENDMENT, I DO NOT SEE THE NEED FOR TINKERING WITH OUR STRUCTURES AND GUIDELINES AS THEY'VE BEEN AMENDED OVER THE YEARS. I DEFINITELY PUT THIS NEW PROPOSAL IN THAT CATEGORY. I DON'T SEE ANYTHING ABOUT THE TIMING OF ELECTIONS, INAUGURALS OR THE ARRIVAL OF NEW CONGRESSES THAT REQUIRES ANY CHANGE.

WHAT IS BROKEN? WHAT NEEDS FIXING? IN MY VIEW, IN THIS AREA, NOTHING AT ALL. INDEED, THIS STRIKES ME AS A SOLUTION IN SEARCH OF A PROBLEM.

WERE I APPEARING BEFORE YOU IN 1930, DISCUSSING THE PROPOSED 20TH AMENDMENT, I WOULD PROBABLY HAVE TAKEN A DIFFERENT POSITION. I CAN EASILY SEE THE REASONS FOR CHANGE THAT PRECIPITATED THE 20TH AMENDMENT. A GAP OF FOUR FULL MONTHS BETWEEN A PRESIDENTIAL ELECTION AND A PRESIDENTIAL INAUGURATION, AND THE SAME PERIOD OF TIME BETWEEN A CONGRESSIONAL ELECTION AND THE CONVENING OF THE NEW CONGRESS, CREATED THEORETICAL AND PRACTICAL PROBLEMS OFTEN ENOUGH THAT CHANGING THOSE DATES MADE SENSE. AND IN THE FIFTY YEARS SINCE THE 20TH AMENDMENT, I BELIEVE THE SYSTEM HAS WORKED JUST FINE. WE HAVE NOT HAD UNTIMELY DEATHS THAT HAVE ALTERED THE BALANCE OF PARTISAN POWER IN CONGRESS OR CALLED INTO QUESTION THE NATURE OF PRESIDENTIAL SUCCESSION. EVEN IF WE DO WE HAVE PROVISIONS IN THE CONSTITUTION AND IN STATUTE TO HANDLE ALL OF THE QUESTIONS THAT MIGHT ARISE. (THE AEI PUBLICATION, AFTER THE PEOPLE VOTE: STEPS IN CHOOSING THE PRESIDENT LAYS OUT ALL OF THOSE OPTIONS.)

WHEN CONGRESS CONSIDERED THE 20TH AMENDMENT, IT DELIBERATELY LEFT A HIATUS BETWEEN THE ELECTION AND THE CHANGE IN POWER. PART OF THE REASON, NO DOUBT, WAS TO ALLOW TIME FOR THE FORMAL STEPS OF CONVENING ELECTORS, COUNTING ELECTORAL VOTES, AND CERTIFYING THEM IN CONGRESS. BUT CLEARLY ALSO PART OF THE REASON WAS TO ALLOW A TIME FOR ALL PARTIES IN THE SYSTEM TO PAUSE, REST AFTER A GRUELING ELECTION CAMPAIGN, AND HEAL THE WOUNDS BEFORE CHANGING THE REINS OF POWER. IN YEARS SINCE, WE HAVE SEEN THE VALUE OF THIS HIATUS IN FACILITATING THE COMPLICATED BUT NECESSARY TRANSITION THAT OUGHT TO TAKE PLACE BETWEEN ONE ADMINISTRATION AND THE NEXT. THERE IS, IN MY VIEW, CLEARLY VALUE IN HAVING A TRANSITION, ENABLING A NEWLY ELECTED PRESIDENT TO THINK ABOUT THE STRUCTURE OF HIS WHITE HOUSE AND THE NATURE OF HIS CABINET, TO UNDERSTAND THE AREAS OF PUBLIC POLICY WHERE CONTINUITY MIGHT BE VALUABLE AND WHERE A NEW POLICY MIGHT MOST EASILY BE IMPLEMENTED; TO EVALUATE THE THOUSANDS OF SETS OF CREDENTIALS COMING IN FROM AROUND THE COUNTRY AND THE WORLD FOR THE THOUSANDS OF JOBS AVAILABLE TO A NEW ADMINISTRATION. A PRESIDENTIAL CAMPAIGN IS NO TIME TO PUT THESE THINGS TOGETHER. IT WOULD BE EVEN WORSE, IN MY VIEW, TO START DOING IT AFTER INAUGURATION. LEAVE SOME TIME . . . AND THE TIME WE NOW LEAVE, ABOUT TEN WEEKS, IS JUST ABOUT RIGHT.

THE ONE ARGUMENT, I SUPPOSE, THAT COULD BE MADE AGAINST THE PROVISIONS OF THE 20TH AMENDMENT IS THAT THEY PROVIDE FOR THE POSSIBILITY OF FREQUENT LAME DUCK SESSIONS OF CONGRESS -- AND, OF COURSE, WE HAVE SEEN THE FREQUENCY OF THESE SESSIONS INCREASE IN RECENT YEARS. TO BE FRANK, THIS DOESN'T BOTHER ME. I DO NOT SEE ANY EVIDENCE THAT THE AMERICAN PUBLIC VIEWS A LAME DUCK SESSION OF CONGRESS AS ANY LESS LEGITIMATE THAN A REGULAR SESSION. NOR DO AMERICANS VIEW LAME DUCK MEMBERS OF CONGRESS -- THOSE WHO HAVE BEEN DEFEATED IN NOVEMBER OR WHO HAVE RETIRED -- AS ANY LESS LEGITIMATE THAN CONTINUING MEMBERS. IF THAT WERE A PROBLEM, IN THEORY OR IN PRACTICE, THEN THE SAME PROBLEM WOULD EXIST FOR THOSE WHO GET DEFEATED IN PRIMARIES OR WHO ANNOUNCE THEIR RETIREMENT EARLY IN THE CONGRESSIONAL SESSION. WE GRANT LEGITIMACY TO ELECTED MEMBERS OF CONGRESS UNTIL THE END OF THEIR TERM -- EVEN IF THE TERM ENDS SEVERAL WEEKS AFTER THE ELECTION.

WOULD THIS PROPOSED AMENDMENT MAKE POST-ELECTION SESSIONS LESS FREQUENT OR LIKELY? OF COURSE NOT. IN FACT, IT WOULD REQUIRE SESSIONS OF CONGRESS RIGHT AFTER EACH ELECTION AND WOULD PROBABLY EVOLVE INTO EVEN MORE OF A YEAR-ROUND CONTINUING CONGRESS THAN WE HAVE NOW.

IN SUM, THEN, I SEE NO PARTICULAR REASON TO CHANGE THE CONSTITUTION -- AN ACT WE SHOULD UNDERTAKE ONLY WHEN THE EVIDENCE OF NEED FOR CHANGE IS OVERWHELMING. INDEED, I SEE MANY GOOD REASONS, ESPECIALLY THE VALUE OF A REASONABLE PERIOD FOR PRESIDENTIAL TRANSITION, FOR MAINTAINING THE EXISTING SYSTEM. THIS PART OF THE CONSTITUTION IS NOT "BROKE". THERE'S NOTHING TO FIX.

Senator HATCH. Well, thank you. All three of you have been very articulate and very helpful. In fact, every witness today has.

And I appreciate your observation that this subcommittee has been very active over the last number of years—I feel like I have been worked right into the ground, and I have got all kinds of colleagues who want even more consideration on various constitutional amendment proposals--and, of course, I've had a few of them myself.

But it has been an interesting subcommittee, and we have had, I think, some of the truly great people in this country come and testify on both sides of all of these issues. I have, for instance, enjoyed the 7 days of hearings we have had on the equal rights amendment. I think they have been very elucidative hearings, and we have had the best people we could find on both sides of the issue.

And that goes for this hearing as well. I am very grateful for every witness who has testified today.

Let me just throw this out. From time to time, we hear of proposals to abolish the electoral college, and, of course, to elect Presidents by direct popular vote.

What effect would this have? I will start with you, Dr. David, first—what effect would this have, the proposal of direct election of the President, toward the inauguration date of November 20? You know, some have the idea that we should do away with the electoral college, and, if we do, we are going to have to have a potential for runoff elections. I questioned, during the last debate that we held back in 1978 or 1979, whether even the time till January 20 would have been sufficient time for a runoff, should the top two candidates not have received 40 percent under the then Birch Bayh proposal for direct election of the President.

Part of my question is the impact this proposal would have on the electoral college structure which, as Professor Orstein mentioned, normally convenes during the month of December. What effect and impact would this proposed constitutional amendment have on the convening of the electoral college.

So I am concerned. For those who like direct election of the President, this amendment certainly would seem to me to do away with that argument forever. I don't happen to like it.

On the other hand, I see some other things that I would like—since we are on direct election, that I would like to ask some questions about also.

Dr. David, what would be your opinion there, if we move toward a direct election of the President and we take this amendment of November 20 as the inauguration date, or even December 25, how do you think that would impact upon, say, a Birch Bayh type of proposal for direct election of the President?

Dr. DAVID. Well, I think you are quite right, Mr. Chairman, that the November 20 date would become impractical if nothing was done about the date of election. I would think that under the direct election proposal, there would be even more reasons than otherwise to move up the date of the election a few weeks.

Senator HATCH. You would get time on the other end.

Dr. DAVID. Yes. I think campaigns are too long anyhow, and one of the main reasons I suggested this change in the date of election.

Senator HATCH. Some think they are too short, at least in the year of the campaign. We are now getting into a 4-year campaign situation, but basically it's really 2 years.

But during the year of the campaign, when it really is intensive, some think it is too short.

What do you gentlemen think on this question? You might answer what you feel about Dr. David's moving up to October 1 the actual election.

Professor WAYNE. Well, I would like to comment, Mr. Chairman, first on the direct election. You are certainly right—if the Birch Bayh amendment were adopted, it requires the successful candidate to receive 40 percent. If we had three candidates and one didn't get the 40 percent, we need a runoff.

But there is another problem.

Senator HATCH. Well, you would only have two under his proposal—the top two would run off.

Professor WAYNE. Yes, I am saying what if in the first round no one got the required 40 percent. If we had only two candidates in the first round, the odds are that one of them would get at least 40 percent of the total vote. If we had three, one of them might not.

Senator HATCH. Well, that is what their argument is. I could see lots of ways where that wouldn't occur. We could have a French-type election.

Professor WAYNE. Well, that's right. The other thing is that the election might be very, very close. If you look at the 1976 and 1960 elections, those were very, very close. A switch of a few, relatively small number of votes could have affected the outcome. Any allegations of election fraud or various kinds of hanky-panky would require us to recount the whole damn election, and that might take days and many lawsuits. That would be another potential problem.

Finally, the mandate might be much smaller. There was no question about the size of the Reagan victory when you look at the electoral college, but it would have been less pronounced on a direct popular vote. In that case, the President's ability to claim a mandate would be less.

Senator HATCH. Dr. Ornstein.

Dr. ORNSTEIN. I agree with Professor Wayne entirely. I think we have much greater problems in terms of uncertainty in transition with direct election of a President. I look back at 1960. Former President Nixon was just discussing the 1960 case in his interviews on CBS where the concern was confined to Illinois because of the electoral college system in a very close election. Imagine if a recount had taken place in Illinois; it would have been difficult enough, and there really would have been uncertainty as to who the next President would be.

But imagine under direct election a President calling for a recount nationwide, which would have been the case in 1960. It would have been disastrous.

I think the problems with direct election are much worse. Even with our system, there may be a problem and we might require a recount, or at least some uncertainty can exist.

One of the reasons why I think having a transition of 10 weeks, as we do have, and having a period before the electors formally meet to vote, is that does leave some time built into the system to

iron out those problems long before an inauguration actually takes place.

And I think that is positive.

Senator HATCH. Some people think that there are housecleaning—you know, one of the questions I have about the Constitution is, and this particular amendment, in all respect to Senator Pell and Senator Mathias, is, is it so significant that we should go through the process of amending the Constitution of the United States.

Now, I believe that the proponents believe it is significant. I question that it is that significant that we should go through this process, that is a very significant process, to overuse the term "significant."

But perhaps in line with, say, a general clarifying of certain issues that we all are concerned about in the Constitution, perhaps we could have an amendment that might include the issue of reducing the Presidential transition period, which Senator Pell and Senator Mathias would like to do—perhaps eliminate the faithful selector—everybody agrees that that is an anachronism, that really isn't something that should exist in the Constitution. We could even clarify, if we wanted to, say, the possibility of States apportioning electoral votes by congressional district. I think that stands in need of clarification, and we could do that.

We could allow naturalized citizens, for instance, to serve as President, which does seem to be an archaic prohibition, the present provision does. We understand what the Founding Fathers were concerned about; that no longer seems to be that much of an important consideration, especially if we want the best person in America to be President of the United States—sometimes that best person may not be a born-in-the-United-States citizen.

We might want to clarify the decennial census, so we not only count citizens, but, let's say, we count various legal alien residents as well, so that we know where we stand there. That would be of inestimable value to political scientists and to all of us who are interested in the processes of Government throughout our society.

And maybe we would want to make even technical changes in the 25th amendment regarding the succession of Presidents.

Would that change either of your minds, Professors Ornstein and Wayne, if we put together an amendment like that that might resolve some of these conflicts that should be resolved, that really would take individual amendments to do so otherwise, but we haven't seen fit to do it because none of those may be as significant as Members of Congress would like them to be individually, standing alone?

Dr. ORNSTEIN. Well, speaking for myself, Mr. Chairman, you could probably reach the point where twisting my arm enough would lead me to reluctantly agree to a change in the Constitution.

Senator HATCH. I would like you to think about that. I would like you to advise this committee on these issues, because there are some things that could be clarified, and I think where you could have tremendous bipartisan support.

Dr. ORNSTEIN. There is certainly truth to that. Some of the things that you have mentioned clearly are in need of change. I am not sure that you need to clarify the question of how electoral votes

can be counted. In Maine, of course, they do count their electoral votes by congressional district. The possibility has existed and does exist for States to decide themselves what they will do about electoral votes.

Some of the things probably have a widespread consensus. I am afraid that if you got into a catch-all constitutional amendment, however, that you would run a danger of throwing some things in that haven't had a searching enough debate, and you might end up creating problems that would need further clarification by another constitutional amendment, and we get into that process of tinkering.

Senator HATCH. We would have to do that, and I would look at this amendment as perhaps a clarification amendment, one that should be a development of a bipartisan consensus.

I have been intrigued by Dr. David's suggestion that perhaps we could lop a month off the election process. It is an interesting thought.

Dr. ORNSTEIN. Maybe we ought to just put a dome over the Capitol.

Professor WAYNE. Mr. Chairman, I don't know if you moved the election up whether you would shorten the process. What you might have is the candidates campaigning at the beaches and in the mountains over the summer.

Dr. ORNSTEIN. Incidentally, Mr. Chairman, I don't think the general election campaign is too long—quite the contrary.

Senator HATCH. I am not sure that I think it is either, I am just intrigued by what Dr. David says.

You think it is too long.

Dr. DAVID. Yes.

Senator HATCH. There are so many intriguing questions we could ask here. An incoming President is faced with a large and time-consuming task of assembling a Cabinet, each member of which has to be reviewed by the Federal Bureau of Investigation.

I have seen some of those FBI reports take months in the case of certain people. Now, if you have a transition period—well, maybe even the President-to-be has to announce, because of public pressure, leaks, and a whole variety of other complexities, a number of people who are going to be in his Cabinet well in advance of the election, and yet still I can't conceive of that FBI process starting until that person becomes President of the United States and is inaugurated.

So you are talking about shortening the time for that process, which albeit is a very important process. I think it's a very difficult process to be very accurate about, and I think we have seen lots of evidence that perhaps, as good a job as the FBI does, it still is inadequate for these types of positions.

But if you reduce the time, that even makes it more difficult, Dr. David, for that process to continue.

What do you have to say about that?

Dr. DAVID. Well, I would hope that parts of that FBI process could be started earlier, even if it wasn't completed.

Senator HATCH. Well, but isn't that taking very important time away from the FBI? I remember the Donovan case, it took I can't remember how many FBI agents, plus clerical people and others,

just to follow through on the allegations that were being made by various underworld people. And, you know, if that process started—let's say that the Donovan process, some of those leaks came out during a Presidential election where President Reagan says, well, I would like to have Raymond Donovan as my Secretary of Labor—all of it ultimately fairly satisfactorily, at least in Mr. Donovan's eyes and many others, in the end, but certainly would not have been cleared up during the election process. It could have amounted to the nonelection of Ronald Reagan. Or Burt Lance in the case of Jimmy Carter. Or you can cite one or two in I guess every, almost every presidency.

So you have an artificiality determining who is President of the United States, something that shouldn't be the determinant.

On the other hand, I see on the other side of that question it might be a very good thing for a President to have to state in advance who he really does want to serve in his Cabinet. And it might be a great pressure on him to be less partisan and less political in those choices.

So that is a plus in my book. So I see two sides of that, and we could go into that for hours.

But I see that FBI process as not really being able to start until the President is inaugurated.

Dr. DAVID. Well, I would think parts of it could be started informally—but I agree, in fact I believe that I don't think it's practical for a Presidential candidate to announce his Cabinet before the election.

Senator HATCH. But it's going to happen; there is no way he is going to avoid it, because there is no way you are going to keep that absolutely quiet in our present system.

Dr. DAVID. Yes.

Senator HATCH. There is constant badgering by various sources and people in our system to find these things out. We can't keep top secret information that may be crucial to the national security interests of this country—we can't keep that confidential. How are we going to keep those things confidential?

And even if we did—even if we were successful in keeping them confidential, it seems to me there would be widespread speculation anyway.

Dr. ORNSTEIN. Oh, sure, but I think, Mr. Chairman, that there are political reasons for Presidential candidates not to reveal their Cabinet choices, and those political reasons will remain unless we absolutely require it.

When Jimmy Carter was running in 1976, part of his campaign theme, as Hamilton Jordan expressed it even after the election, is we are not going to have people like Cyrus Vance and Zbigniew Brzezinski running our foreign policy. It was an important theme for him during the campaign.

Senator HATCH. That's right.

Dr. ORNSTEIN. Now, after the election, I think another dose of reality set in and, of course, we saw Vance and Brzezinski, and I think appropriately so.

There were political reasons for stating that during the campaign.

Senator HATCH. Or Reagan stating about the Trilateral Commission, and look how many Trilateral Commission members that have been members of both administrations.

Dr. ORNSTEIN. Sure, the political needs of the campaign conflict with the notion of naming specific individuals to a Cabinet, and, as long as that is the case, no matter what——

Senator HATCH. Of course, I would argue against that. I would say, well, that would tend to make the system more honest, because if Carter is going to appoint Vance and Brzezinski, then, by gosh, he shouldn't be running them down during the campaign or allowing his staff people to run them down.

Dr. ORNSTEIN. Of course, what would probably end up happening is that he would have ended up with people less qualified or experienced being appointed during the heat of the campaign.

Senator HATCH. Or compromise people who would be acceptable to both sides, I suspect.

Dr. ORNSTEIN. The politics of the campaign, I just think, are not conducive to the selection of a Cabinet, and that, of course, is what we have seen in a parliamentary system where they have even more reason to make those choices early.

Senator HATCH. That's really fascinating; I could ask a lot of questions along those lines. Had President Reagan, for instance, chosen "Scoop" Jackson as Secretary of Defense, some people suggest that he might have had an easier bipartisan foreign policy on many of these issues.

Well, that may or may not be the case, but we don't know what the outcome will be. I guess part of the problem with constitutional amendments is we like to anticipate the problems; it is the unanticipated questions we really worry about that Senator Mathias was chatting with us about when he testified.

Well, there are so many things that I would like to ask. Let me just ask a couple of more.

Is there any advantage to convening a new Congress on November 15, as the proposed amendment states, rather than after the New Year, on January 3, as presently is the case, required by the 20th amendment?

Dr. ORNSTEIN. In my testimony I address that question at least briefly. I think there is a value in the transition for Congress as well. It has been argued that we have had too many lameduck sessions lately. That is not for structural reasons, I think, and if you have Congress convening early you would have the equivalent of a lameduck session with Congress having to come back right after an election tired and with a lot of new Members who haven't had a chance to assemble staffs or to go through what I think is a very useful process of orientation now before having to get right into a process of a new budget and a lot of other crucial issues.

It is a useful time in a hiatus for a new Congress as well, and we have managed to deal with our policy problems, if they exist, during this gap through a lameduck session, and I don't see any evidence that that lameduck Congress isn't granted full legitimacy by the American public.

Senator HATCH. Would either of you——

Professor Wayne. I would agree with Dr. Ornstein. It seems to me that the present transition is a useful time not only to rest but

to reflect on what lies ahead, to get organized, to get ready for the confirmation process, which, as I understand it, tends to begin even before the inauguration.

And there needs to be a time when Congress rests, a time when Congress gets organized, and then a time when it considers its presidential relationship. And I don't think that time should be telescoped into 1 week. It's just too short.

Dr. DAVID. It seems to me that the Congress does need at least several weeks before January in which to get organized. The handling of the messages, these very important messages that come over in January, is almost impossible before Congress has got its committee structure set up and working and some of the other organization problems that arise for every new Congress after the election.

So that in my own proposal I was suggesting convening on the first Monday in November. I don't know that it needs to be done that soon, but I would think it certainly needs to be done before the first of December.

Senator HATCH. Well, it has been suggested that this proposal is necessary so that the newly elected President will prepare—you have alluded to this, Dr. Ornstein—will prepare the next budget and deliver the State of the Union Address, that is, the newly elected President will do so.

But I suppose—and tell me if I am wrong on this—that if these are valid problems, we could pass legislation to get around them without the need of a constitutional amendment, is that correct?

Dr. ORNSTEIN. Precisely.

Professor WAYNE. Yes.

Senator HATCH. Is that correct in your eyes, Dr. David?

Dr. DAVID. Well, I think you have got to have a constitutional amendment to change the terms of office which are now frozen in the Constitution. You can't very well convene Congress before their term of office begins.

Senator HATCH. I agree, but with regard to budget matters we could change the respective time periods.

Dr. DAVID. When the budget comes over?

Senator HATCH. Sure, we could change that, we could change the State of the Union Address.

Dr. DAVID. Well, they have been slipping in recent years.

Senator HATCH. Well, I see some advantages to that. I do think if we are going to have a system that works, perhaps the budget would be better 3 months after the new President comes in. Now, he has one-quarter of the old President's budget, but then he has to come up with a new budget for that next year—so he loses a quarter, but maybe has an—that militates in favor of what Dr. David is saying, because our budgetary year ends, of course, September 30, and the new President is installed in that first week in October, then he would put up with the budget of the prior President through the end of the year, but then would be responsible for the next budget, if we would change to a calendar year, for instance, rather than the fiscal year.

So there are some interesting and intriguing problems here. And I would like to have all three of you, as well as the other witnesses, maybe spend even a little bit more time on this to see if we can—

give me as many arguments as you can pro and con, for us on this subcommittee, and, of course, the full Judiciary Committee, too, and let's see what we can do here.

I am not sure, having listened to both sides, just what is the best approach to take here, and so we are open to an awful lot of advice and counsel.

Senator Pell, did you have any questions?

Senator PELL. No further questions, thank you, Mr. Chairman.

Senator HATCH. All right, then, what we will do is keep this record open for all Senators on this subcommittee and any Senators of the full Judiciary Committee who would like to to submit questions on this very intriguing and important issue.

I would also like all three of you, and all witnesses who have testified today, and anybody else who is interested, to consider my idea of a clarifying amendment that might get around this problem that this proposed amendment in and of itself may not be a significant enough amendment to require the constitutional process to come into being.

But it may be a significant part of the clarifying amendment, and that may be—for instance, I think it's time to get rid of the unfaithful selector and put that to bed, and we could do it on a State-by-State basis, but let's put it to bed and resolve a couple of these things that virtually everybody agrees on.

All three of you would be of inestimable help to this committee if you would give us your ideas in this area, and keep in mind I don't think we could, through a clarifying amendment, put through very many substantive ideas. I think we are going to have to be basically clarifying, these ideas are going to have to be basically clarifying and procedural ideas that will help our Constitution to function more efficiently and better in the eyes of everybody.

With that I just want to personally thank you for the effort you have put forth and for the time we spent here together, and I want to thank Senator Pell and Senator Mathias for the work that they have done.

And with that we will recess until further notice.

[The subcommittee adjourned at 11:57 a.m.]

APPENDIX

Additional Submissions for the Record

SHORTENING THE INTERREGNUM

The 20th Amendment to the Constitution (1933) reduced the period between the election and inauguration of Presidents from four months to ten weeks. This amendment, ratified more than half a century ago, during the Great Depression, expressed national recognition of the difficulties caused by a protracted interregnum in an age requiring effective government and continuous decision. It expressed also recognition of the embarrassment to the democratic process of lame-duck Presidents and Congresses.

The question now arises whether, as the velocity of history continues to accelerate, the interregnum should not be further reduced and new Presidents inaugurated on 20 November instead of on 20 January.

Few features of the American political system dismay our friends (and doubtless gratify our enemies) more than the yawning gap between election and inauguration — a period of inevitable indecision, even paralysis, in the operations of our government. No other system has such comparable delay before a new government takes over. In Great Britain, when one government gives way to another, the new prime minister moves into 10 Downing Street overnight. The French Constitution provides for a period of between 20 and 35 days between the presidential election and the assumption of office by the new President. Under the 20th Amendment, the American Constitution provides for about seventy days.

Admittedly two factors simplify transitions in parliamentary regimes. One is the limited number of government positions available for political appointment. The other is the requirement (in most cases) that the cabinet be chosen from the parliament and the consequent prior existence of a 'shadow government.' Nevertheless the possibility of a swifter transition in our polity deserves serious exploration.

This is all the more the case because of the noxious consequences of the Presidential Transition Act of 1963. That act was designed to institutionalize the process of transition from one administration to another. In practice, it has transformed that process into a bureaucratic monstrosity. Formerly the transition was handled by modest presidential staffs with expenses met by the national committee of the victorious party. The 1980-81 transition involved 1200 people as well as $2 million granted under the Transition Act and an additional $1 million or so (no one can be sure, since the Presidential Transition Foundation refuses to open its records) raised and expended privately. The Transition Act has not only contributed to the weakening of the role of the political party, but it has encouraged all forms of pre-inaugural bureaucratic jostling and infighting. The case seems to me strong for the repeal of this Act. For nearly two centuries American Presidents managed to succeed each other without making a big production of it.

Cutting the interregnum from ten to two weeks would avoid the costly sprawl of transition bureaucracy that marked the 1980-81 changeover. It would relieve Washington more rapidly of the spectral presence of a vanishing administration. It would minimize the dangerous period of policy void that paralyzes domestic decisions and invites trouble in world affairs.

Most beneficial of all, it would compel presidential candidates to assemble their teams and plans in advance of the election. In these days, when hyped television spots have driven out the policy speeches of other times, the disclosure of prospective cabinets and programs would do

something to restore substance to campaigns and to offer voters better evidence on which to make their decisions.

The case against the proposed amendment is that it would not leave incoming Presidents enough time to figure out their policies and their major appointments. But if a new President has not figured out his policies and his major appointments before the election, he hardly deserves to be President. The proposed amendment, by enforcing on presidential candidates the discipline of advance planning and by reducing the post-election period of national impotence, could not but have a stimulating effect on responsible politics.

I strongly urge that this amendment receive the committee's most thoughtful consideration.

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THE CARTER-REAGAN TRANSITION: HITTING THE GROUND RUNNING

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I. Introduction

Electoral mandates are made, not born. What a President does after his election and in his first several months in office sets the tone for his administration and may determine whether or not he is able to deliver on his campaign promises. While President Reagan's transition was marked by some successes and some failures, he took office under a favorable set of circumstances. No major domestic or foreign crises were pending, and the U.S. hostages had been returned from Iran. The nation had elected him in a landslide victory and had presented him with the first Republican Senate in several decades. Although the electorate had spoken emphatically, it had not articulated its preferences very precisely. The analysis of public opinion polls showed that the public did not necessarily support the conservative goals or drastic budget cuts the Reagan administration had promised, though it did want increased defense spending, reduced taxes and overall reductions in spending.[1]

But in an important sense electoral mandates are made in office, not born in the election. President Reagan pursued his policy priorities in his early months in office and received positive approval ratings in opinion polls. The electoral "mandate" was an opportunity to lead the country in the direction he wanted to go, and he took that opportunity to accomplish much of what he had set out to do in his first eight months in office.

The goals of any presidential transition are to take over the government in order to direct national policy toward the priorities of the new President. This article will focus on the transition of governmental power rather than on the many other roles and functions a President performs. In order to achieve his policy goals a President must first gain control of his major tools of power: legislation, the budget, personnel, and administration.

This article will analyze the early experience of the Reagan administration in its attempts to gain control of the government in these four crucial areas. It will conclude that in achieving its legislative and budget goals the administration's careful planning and consummate political skills can serve as a model for future transitions. This is not to assert that it gained these goals with no costs to other priorities. Early personnel choices by the administration put a heavy emphasis on personal loyalty to Ronald Reagan. This was done at the cost of professional experience and the ability of many chief executives to choose their own management teams. The personnel process involved a series of clearances that helped assure that all bases were touched, but this was done at the cost of time. Subcabinet personnel appointments dragged on into the summer of 1981 at the cost of administrative leadership and managerial direction. This extended the period of bureaucratic drift that is involved in any change in top leadership. This article will also examine the view from the bottom up, that is, what happens in the bureaucracy during a period of presidential transition.

II. The Lame-Duck Eleven Weeks

Policy direction and control can come to a presidential administration only after the inauguration on January 20th. But the groundwork for the takeover of power must begin well before November, and be under way in earnest immediately after the election. The foundation for the tran-

sition is laid during the lame-duck eleven weeks between election and inauguration. As the outgoing administration ties up loose ends, the President-Elect scrambles to put together a governing team, and the bureaucracy slips into neutral gear while it awaits its new bosses.

The Outgoing Administration

After the election new policy initiatives stop as agencies become reluctant to make agreements that may become moot on January 20. The outgoing administration is usually sensitive to the need to give the incoming President as clean a slate as possible. On the other hand, there is a flurry to complete those policy decisions well underway so that they cannot be easily reversed by the new people. One example of this was the litigation over the Professional and Administrative Career Examination (PACE), the professional level entry examination that had been challenged in court as discriminatory. The Justice Department and the Office of Personnel Management were handling the case, and in the final days of the Carter administration, negotiated a consent decree that committed OPM to develop Civil Service entrance examinations that did not have a discriminatory impact on minority groups.[3] While the outgoing Carter officials felt they were minimizing the cost to the government and still upholding the spirit of non-discrimination, the Reagan people felt they made an eleventh hour deal that committed the government to a form of reverse discrimination.

A major concern of all newly elected administrations is that the outgoing administration will attempt to seed the bureaucracy with its own people, either to save their jobs or to leave behind people sympathetic to the old and hostile to the new administration's goals. One way this can be done is to have people who entered the government as political appointees converted to career status in the Civil Service or to career Senior Executive Service appointments.

In the past this could be done wholesale and was called "blanketing in." It occurred when a President staffed a new agency with officials from his own party, and then issued an executive order that put the personnel of the new agency under the jurisdiction of the merit system and under Civil Service rules. The next administration thus could not throw out the political appointees upon taking office, and could remove them only for cause through cumbersome Civil Service procedures. Most presidents since the Pendleton Act was passed in 1883 to World War II engaged in this practice to a greater or lesser extent.

This option is no longer readily available to presidents, but individual political appointees can try to immunize themselves from being ousted by the next administration by getting for themselves "career status" with all the attendant procedural protections of the Civil Service. This maneuver is called "burrowing in." On January 4, 1980 OPM sent out FPM (Federal Personnel Manual) Bulletin 273-18 to remind agencies that during election years they ought to "carefully review all personnel actions to be certain they meet all civil service rules and regulations and also that these actions are free of any stigma of impropriety." The bulletin urged agency personnel directors to review carefully any actions that would place incumbents of positions in the excepted service in the competitive service.[3] In a follow-up Operations Letter to OPM officials on September 17, 1980 it was reiterated that "before any competitive staffing action is initiated involving a conversion of an excepted service employee" it should be ascertained that there is a "bonafide vacancy" and that, "In no instance should vacancies be announced solely to convert an excepted service employee to a position in the competitive service."[4]

Despite OPM policy there were some attempted conversions of political appointees to the career service. OPM investigated 43 conversions in three agencies during the transition period and concluded that 13 were improper. Conversions are legitimate if there is a genuine competitive selection process or if the employee had a prior competitive service appointment. Not all conversions are attempts to "burrow in." The General Ac-

counting Office did an investigation of conversion cases during the transition period that covered four additional agencies. While it found no improper conversions, it found that some attempts were made but stopped by OPM or the agency's personnel monitoring system. The GAO report suggested that a more comprehensive monitoring system be instituted for future presidential transitions.[7] While the problem of potential conversions from political to career status is a serious one, the number of such attempts during the Carter-Reagan transition was small, and the OPM monitoring system seemed to pick up most improper actions.

President Carter named Jack Watson his deputy for the transition. On November 10 Watson sent a memo to cabinet and agency heads reminding them that the purpose of the Presidential Transition Act of 1963 was to provide for "the orderly transfer of the executive power." He admonished those preparing materials for the incoming transition teams not to innundate them with excessive detail or unsolicited advice. "Our guideline is simply to be helpful and forthcoming in every way possible, without burying the new people under mountains of briefing books and paper."[8] Thus the official presidential line was to be as helpful as possible to the incoming administration. There were, however, some undercurrents advocating the minimum of help and cooperation. These probably reflected attitudes of individuals who still felt bitter about the campaign or who received less than full cooperation in the transition from the outgoing Ford administration four years earlier.[9]

On November 12, 1980 Watson sent out another memo reminding heads of departments and agencies that the President wanted to give the new administration "appropriate latitude" in filling career SES vacancies or making transfers. Since the 1978 Civil Service Reform Act prohibits new agency heads from transferring career Senior Executives until 120 days after taking office, the memo instructed that "the President expects all department and agency heads personally and carefully to review all recommendations for new SES appointments and transfers of career SES employees between now and January 20, 1981."[9] In addition to this the director of OPM had been carefully monitoring all new SES appointments for the last several months of the Carter Presidency to avoid even the appearance of improper political appointments to the career ranks. In this period some entirely legitimate personnel actions were held up or cancelled in order to eliminate any hint of partisan personnel actions.

On December 10 a Watson memo requested letters of resignation from presidential appointees who expected to leave the government by January 20, although it pointed out that resignations were not technically required until requested by the new administration. It also asked for draft letters of appreciation from the President to the appointees and for the names of the officials who would be acting in positions the presidential appointees left.[9] Some of the final acts of the Carter administration were to decide which political appointees were to get what type of gift as a token of appreciation for service in the Carter administration.

The Reagan Transition Bureaucracy

The Presidential Transition Act of 1963 provides that in order "to promote the orderly transfer of the executive power in connection with the expiration of the term of the office of a President and the inauguration of a new President" that the Administrator of General Services (GSA) provide office space wherever the President-Elect wants as well as staff, travel, communication and printing expenses. The Act, as amended in 1976, provides $2 million for incoming administrations and $1 million for the departing President.[10] While in 1976 President Carter returned $300,000 of his allotment to the treasury, the Reagan administration used the full $2 million plus another million in private funds. When asked about the amount spent by an administration advocating lower government spending, deputy director for transition administration, Verne Orr, replied "The dollar just doesn't buy what it did four years ago."[11]

While President-Elect Nixon chose to run his transition from the Pierre Hotel in

New York City and Carter did much of his work from his home in Plains, Ronald Reagan chose a large government office building at 1726 M Street, several blocks from the White House.[12] Reagan appointed Edwin Meese III to direct transition operations in Washington while his "kitchen cabinet" of business executives met on the west coast to recommend cabinet and other high level appointments. The main divisions under Meese were personnel, headed by Pendleton James; executive branch and Congressional relations, headed by William E. Timmons; and policy issue groups in the foreign, budget, and domestic areas, headed by Richard Allen, Caspar Weinberger, and Martin Anderson, respectively.[13]

Timmons was in charge of about 100 transition teams sent into most federal agencies. They were organized into five issue clusters: economic affairs, national security, human services, resources and development, and legal-administrative. The function of the teams was to set up shop in each agency (which some did the day after the election), examine ongoing operations and issues, report to the transition headquarters the status of agency operations, and recommend changes and cutbacks. Other major functions of the transition teams were to test people for possible appointments in the new administration and to reward loyal campaign workers who would not be kept on.

While the agencies and departments scrambled to prepare briefing books to acquaint the new teams with their functions and operations, the team members were keeping tight lipped about their recommendations. The teams had full access to budget and operation files, though not to individual personnel files. Members of the career service in general were very responsive to the transition teams, since any member might become a new boss or colleague. Some team members ended up heading the agency to which they were assigned, while some teams were dismissed when the new boss was named (e.g. State and Defense).

There were so many people working on the transition that the operation soon developed into a bureaucracy in itself. Transition press secretary James Brady said there were 588 listings in the telephone directory, but if people in agency teams were included there could be twice as many people.[14] The Carter transition had 312 people on the payroll.[15] One of the problems with a staff of such size is trying to determine who speaks for the new administration. Even though transition teams had no policy authority, and public statements were supposed to be funneled through the transition hierarchy; there were a number of embarrassing leaks as representatives of various interests began to push their own policy preferences.

Early in the transition period members of the OPM transition team, Donald Devine and R. T. McNamar, met with agency personnel directors. The purpose of the meeting was to assure the career Civil Service that the Reagan administration would respect the integrity of the career personnel system and promise there would be no "sweeping changes." They said they understood that career SES positions were not frozen but they expected that any appointments would be carefully scrutinized and filled only if absolutely necessary. They said they supported the Civil Service Reform Act of 1978 and promised its continued implementation.[16] They asked for advice on how to make the transition a smooth one, but no useful comments were forthcoming from the group. Such advice usually got to the new administration via other channels; usually a high level person with credibility in both administrations was asked to relay by hand any advice or suggestions from the departing administration.

III. Taking Over the Government

Legislative Control

President Reagan's early successes with the Congress have been considered comparable to those of Woodrow Wilson, Franklin Roosevelt, and Lyndon Johnson. He benefitted from the sense of economic crisis felt by the public and from his land-slide victory. And he was able to overcome the fragmenting tendencies that frustrated his three immediate predeces-

sors in their efforts with the Congress. But his success was qualified by the fact that he focussed his legislative efforts on his economic program to the virtual exclusion of other Republican priorities. This section will examine the basis of the impressive, early legislative victories of the Reagan Administration in its courting of Congress, legislative liaison, and legislative strategy and tactics.

Ronald Reagan began the careful courting of Congress long before he became President-Elect. In 1977 he helped set up a political action committee, Citizens for the Republic, that funneled campaign money to Republican candidates. The payoff came when 62 of those he helped were victorious and could be expected to be grateful for his help and coattails.[1] After his nomination his aides made early contacts with members of Congress and set up a network of advisory committees for the Reagan campaign that included 160 members of Congress.[2] He made a symbolic gesture to the importance of Congress during his campaign by staging on the steps of the Capitol a show of unity on his future legislative agenda. While not specific in substance, it was intended to be an important gesture. Of more substantive importance was Reagan's inclusion of Senator Paul Laxalt and Congressman Thomas B. Evans, Jr. in weekly campaign strategy sessions at his headquarters in Arlington, VA.

After the election Congress continued to be a major transition priority. The President-Elect held a series of dinners to which he invited members of Congress. With the realization that Democratic votes would be necessary for his legislative agenda he announced that he would retain ex-Senator Mike Mansfield as ambassador to Japan. He took particular care to court House Majority Leader Tip O'Neill who had chafed at perceived slights from the Carter White House. He and his wife were invited to a private dinner at the White House, and he was also invited to the President's small 70th birthday party. Republican members of Congress were invited to advise the transition teams in the departments. And the President-Elect sought the advice of Senators Robert Dole, John Tower, and Strom Thurmond in making his cabinet choices.

The choice of Max Friedersdorf was an important decision in the new President's legislative strategy. Friedersdorf had been President Ford's chief lobbyist and had worked in legislative liaison for President Nixon. He was widely respected on the Hill and selected his lobbying staff from those with strong professional experience with Congress. The intention was to show a sharp contrast with President Carter's choice of Frank Moore who recruited a less experienced lobbying staff. In his dealings with Congress Reagan consciously deemphasized his being an outsider to Washington. His advisors felt that the "outsider" concept had been one of the reasons for President Carter's lack of early success with the Congress.

The main elements of the Reagan legislative strategy were speed and focus. Old Washington hands and academics alike had warned that the scope of budgetary changes sought by the new administration would be virtually impossible to get through the Congress, particularly the Democratic House. The Reagan strategists realized that if it was to be done at all it had to be done quickly, both to take advantage of public confidence and the election "mandate" and to move before opposition could coalesce. During the first months of 1981 the Democrats were in shock from the Republican electoral victory and were unable to unite on any coherent opposition to the Reagan economic program.

The second element of the strategy, focus, was intended to avoid what they felt was the Carter mistake of sending Congress too much, too soon. Thus the Reagan strategy systematically neglected other Republican priorities, particularly "social issues," such as bussing, abortion, school prayer, and crime. Since he could count on the Republican Senate for support, the keystone of his legislative strategy was his ability to carry the block of conservative Democrats known as the "Boll Weevils." They were a vulnerable target both because they were conservatives and would likely be somewhat sympathetic to his program, and also because

Reagan had carried many of their districts in the election.

The winning of the votes of the Boll Weevils (and of other House members) covered the gamut of legislative tactics from softsell to hardball. To garner votes for his economic package the President systematically and personally dealt with wavering members. He called them repeatedly; he invited them to the White House and Camp David and gave them small favors such as cuff links or tickets to the Presidential box at the Kennedy Center. The President's personal approach was understated and soft pedaled. He dealt with general issues and did not get involved with the details of legislative horse trading. His aides would follow up with specific promises and threats.[19]

In addition to small favors and courtesies the administration made policy compromises to get votes, such as the "rental" of Democrat John Breaux's vote in exchange for a pledge on sugar price supports or a compromise on peanut price supports.[20] When the carrots of favors and compromises did not do the job, the sticks of political hardball were brought out. One of the main tactics was going directly to the voters. It is ironic that President Carter was criticized so severely on the Hill for *threatening* to go over the heads of Congress to the people if legislators would not give him what he wanted. President Reagan did not threaten, he just did it. He put pressure on Congress by a series of televised speeches to the nation as well as personal appeals to groups around the country by himself and members of his administration. In the battle for the administration's tax bill, the President in a televised speech asked people to call their Representatives and demand support for his bill. With the help of donated corporate phone banks the volume of calls at the Capitol switchboard doubled.[21]

The "Southern Blitz" masterminded by Lyn Nofziger sent high administration officials into the districts of 45 southern Representatives in late April 1981 to pressure them to vote with the administration on the first concurrent resolution. Conservative groups were organized, the media were blanketed with paid and voluntary messages, and even campaign contributors of the Representatives were mobilized.

One of the most potent tactics was the use of electoral leverage. There was the threat that big political action money would be used against those who opposed the President's program.[22] There was also the promise that conservative organizations, such as the Committee for the Survival of a Free Congress and the Fund for the Conservative Majority, would not campaign against Democrats voting the right way.[23] There was even a presidential promise not to campaign against southern Democrats who consistently supported his budget program.[24] Some have argued that these short term political victories were purchased at the price of long term Republican renewal in the south.[25]

Thus by skillful courting of Congress, a coherent legislative strategy, and shrewd use of a wide range of lobbying tactics did President Reagan accomplish most of the legislative objectives he set in his first eight months in office. He even enjoyed greater party discipline in Congress than had his Republican predecessors Eisenhower, Nixon, or Ford. While his early success with Congress was comparable to those of Wilson, Franklin Roosevelt, and Lyndon Johnson; the range of his legislative goals was narrower. President Carter threw a plethora of difficult issues to the Congress and lost on many of them in his early months (though his overall success rate was not exceptionally low). President Reagan limited his legislative agenda to a few important, though difficult, issues; then with the virtuosity of an old pro he rolled through Congress with a battery of carrots and sticks. In order to concentrate on the economic plan, tough issues were put off until later. One of the few setbacks in this early period of the Reagan administration was the failure to coordinate with Congress the Schweiker-Stockman proposal for Social Security reform, leading to its repudiation in the Senate.[26] The payoff of all the efforts that

went into the Reagan legislative program came in its budget victories, which are the subject of the next section.

Budget Control

Most previous incoming administrations asserted their budget priorities by making marginal changes in the proposed budget of the outgoing President. It used to be considered impossible to do much to a budget proposal that had been a year in the making because of the complexity of the document and because of all of the political bargains that had been struck in arriving at the totals for each program. Yet by March 10, only 49 days after taking office, President Reagan submitted to Congress a complete revision of President Carter's FY1982 budget, including large defense increases, large tax cuts, unprecedented reductions in domestic programs, and even reductions in the then current FY1981 budget. Even more impressive, within six months he had achieved virtually all of his budgetary, if not economic, goals.[27] The sharp reversal of political and budgetary priorities was no accident. It was the product of a carefully laid out plan that put political and governmental machinery into high gear immediately upon President Reagan's taking office. In the budgetary arena the administration did indeed "hit the ground running," much more so than with respect to personnel or management.

The Reagan budget victories of 1981 were the result of advance planning, singleness of purpose, and speed of execution. Much of the groundwork for the specific budget cuts that the new administration would make was done by David Stockman during his two terms in the House as a Representative from Michigan. Immediately after Reagan's victory he, along with Congressman Jack Kemp, wrote an economic plan entitled "Avoiding a GOP Economic Dunkirk" that became known as the "Stockman Manifesto."[28] Stockman impressed President-Elect Reagan so much that he selected him to be his Director of the Office of Management and Budget, the youngest person to hold Cabinet rank in 150 years.[29] Stockman's intimate knowledge of the budgetary process, his command of budget figures, and his lobbying abilities with the Congress were crucial to the early Reagan budget victories.

The new administration decided to revise completely the Carter budget proposals for Fiscal Year 1982 and submit its own budget to the Congress. Before the inauguration, plans for budget cuts were made by Reagan transition teams that were assigned to each federal agency and had access to internal budget and planning documents. After January 20 Stockman was in charge of the entire OMB machinery which he put to work overtime tearing apart the budget they had just put together for President Carter. The overall strategy was to achieve most of the victories quickly in order to cow the opposition and stampede as many members of Congress as possible on the winning band wagon.[30]

Immediately upon taking office the administration took actions to implement its budget plans in the executive branch. OMB sent out bulletins to heads of executive departments and agencies freezing civilian hiring,[31] reducing travel expenditures,[32] making reductions in consulting and related services,[33] and placing a moratorium on the procurement of certain equipment.[34] On February 11 President Reagan sent out a memorandum stressing the short time that was available to revise the entire Carter budget and stated that any disagreements with the OMB budget plans or personnel limits had to be conveyed to the OMB director within 48 hours of the agency's receipt of the budget revisions, a process that normally takes weeks.[35]

A series of televised presidential speeches and official documents began the administration's political budget campaign for Fiscal Year 1982. On February 5 in a TV address the President warned of an "economic calamity of tremendous proportions" if his program were not passed. On February 18 in a speech to a joint session of Congress he presented his

"Program for Economic Recovery" along with an inch-thick document explaining his approach to fiscal and monetary policy. This was followed on March 10 by another address to Congress and the release of *Fiscal Year 1982 Budget Revisions*, the Reagan budget proposal for Fiscal Year 1982, prepared by the Office of Management and Budget. The following month OMB released *Additional Details on Budget Savings*, a document that specified budget projections for each program being cut along with the rationale for the proposed cuts. During the same time members of the Cabinet and Council of Economic Advisers were actively seeking appearances on TV and before various political, governmental, and interest groups in order to promote the administration's budget plans.

One source of potential opposition to the proposed cuts in domestic programs was the executive branch bureaucracies that were being cut. The administration used several approaches to neutralize this potential opposition: it delayed executive appointments and carefully orchestrated cabinet level acceptance of budget cuts. While some argue that the career service, the permanent bureaucrats, are a potent force in opposition to cuts; they were a negligible factor in this set of circumstances. They might have been able to argue convincingly against program cuts, but no one in the administration would listen to them, whereas the administration would have to at least listen to a Reagan appointee. In addition, career executives because of their role perceptions and career interests, tend to be very responsive to new political appointees and their priorities."[16]

During the first few weeks of the administration, before the newly appointed secretaries were fully able or willing to defend their organizations, small meetings were held with Stockman, the President, and several White House aides present, along with the cabinet secretary. The new appointee was confronted with Stockman's proposed cuts and given a chance to argue against them, but that was difficult because "they're in the position of having to argue against the group line. And the group line is cut, cut, cut."[17] Although the new cabinet strongly supported the Reagan economic program in general and probably some cuts to their programs in particular, they may have felt railroaded to go along with decisions made by others before they were ready to take an active role in the process. Stockman admitted "That's a very awkward position for them, and you make them resentful very fast. . . . I have a little nervousness about the heavy-handedness with which I am being forced to act."[18] But the cabinet was a small problem of bringing along the home team compared with the political challenge that faced the administration in Congress.

After President Reagan sent his detailed budget revision proposals to the Congress on March 10, the Congress had to take the first major step in the congressional budget process by passing a first concurrent budget resolution, setting spending, revenue, and deficit targets for Fiscal Year 1982. The crucial strategic decision had been made in February by the administration to use the reconciliation process in conjunction with the first concurrent resolution. Reconciliation was set up in the 1974 Budget Act to enable the House or Senate to require committees to change reported legislation in order to conform with the second concurrent resolution.

The Reagan plan was ambitious; it called for budget cuts—$48.6 billion initially—to be made by changes in the laws authorizing programs and extended the cuts over Fiscal Years 1983 and 1984. The usual budget procedure would call for a first concurrent resolution to set spending targets and then a second resolution in September to make the ceilings final. In the interim, the appropriations committee would pass spending bills within the targets of the first resolution, and if any individual bill violated the final totals of the second resolution, a reconciliation bill could instruct the committees to report out a revised bill to conform with the second resolution. The Republicans, however, felt that the only way to get Con-

gress to go along with the largest budget cuts in U.S. history was to put them all in one bill and pass it as soon as possible.

The crucial votes came in the House on May 7, when it passed the first concurrent resolution and on June 26 when it passed the reconciliation package, including changes in existing legislation. In April the House Budget Committee reported out a Democrat backed budget resolution calling for more spending but a smaller deficit than the administration proposal. After several weeks of intense lobbying, however, sixty-three Democrats defected and passed the administration backed package known as "Gramm-Latta" by 253-176 on May 7. This vote was crucial because it showed that President Reagan could control the Democratic House and get his unprecedented budget changes through the Congress. On May 14 the House and Senate conference committee agreed to the first concurrent resolution including reconciliation instructions requiring authorizing committees to come up with the changes in law that would provide the $36 billion in budget cuts wanted by President Reagan.

Over the next few weeks authorizing committees in both houses struggled to make the cuts required of them in the reconciliation instructions. As each committee made its changes the separate bills were referred back to the budget committees to compile them in a package and bring them to the floor for a vote. In mid-June each Budget Committee reported out the budget cut packages. As in the May vote on the first concurrent resolution, the crucial test came in the House. The House Budget Committee reported a bill compiled from the recommendations of 15 Committees that provided $37.7 billion in savings and claimed the bill included 85% of the cuts wanted by Reagan. Republicans and conservative Democrats, however, claimed that entitlements were not cut enough and not enough programs were put into block grants.[39] They proposed a substitute called "Gramm-Latta II" that conformed very closely with what the administration wanted.

The administration again pulled out its heavy guns in lobbying for the Gramm-Latta substitute. The President himself telephoned or telegraphed each of the 63 Democrats who had voted with the administration on the first budget resolution.[40] Compromises and concessions in the final package were made in order to win votes, some of them departures from the administration's earlier proposals. For example, David Stockman promised that the administration would not oppose the revival of sugar subsidies. He later said: "In economic principle, it's kind of a rotten idea," but "they don't care, over in the White House, they want to win."[41]

The deciding vote came when the House defeated (210–217) a motion that would have allowed the Democrats to force votes on the separate pieces of the reconciliation substitute package rather than yes or no on the whole package as the Republicans wanted. The Gramm-Latta reconciliation substitute itself passed 232–193 on June 26. The Senate had already passed a very similar bill on June 25 by a vote of 80–15. The omnibus reconciliation package cut a total of $35.1 billion from the baseline established by CBO for FY1982 for a total savings of $130.6 billion for Fiscal Years 1982–1984.[42]

The FY1982 reconciliation bill was historic in that it was a major reversal of the spending priorities of the past several decades. House Budget Committee Chair James Jones called it "clearly the most monumental and historic turnaround in fiscal policy that has ever occurred." It provided the largest spending cut in U.S. history, affecting hundreds of programs and made some of the greatest changes ever made in a single bill by the Congress.

Personnel Control

Each incoming administration has the authority to appoint a number of officials who are responsible for the formulation, direction, and advancing of administration policies, or who serve in a confidential relationship to policy makers. These appointees are members of the "excepted service" since they serve at the pleasure of the President and are not subject to the

merit system requirements of the Civil Service. The top cabinet and subcabinet positions, numbering about 300, are ranked in the Executive Schedule levels I–III: cabinet, under, deputy, and associate secretaries. Executive Schedule Levels IV and V, as well as General Schedule levels 16–18 are now included in the Senior Executive Service. Ten percent, about 700 of 7000 (8500 are authorized) of these are non-career members, that is, political appointees. The option is also available to appoint a number of "limited term" or "limited emergency" Senior Executives. Finally, there are Schedule C positions, about 1800 in number, at the GS 15 level and below. Schedule C duties include policy-determining responsibilities or a confidential relationship to key officials."

Each election year the House Committee on Post Office and Civil Service publishes *Policy and Supporting Positions*, the "Plum Book." It lists by agency each administration incumbent by name, position, and salary. During every transition there is a scramble for this committee print because it identifies those specific positions that a new administration can fill and the names of the political appointees who must leave."

In order to fill the top five hundred executive positions as well as hundreds of other positions on regulatory commissions, advisory boards, etc., recent presidential candidates have had personnel operations going well before the election. Candidate Carter set up a "Talent Inventory Program" before his election." In April 1980 Edwin Meese asked Pendleton James, who headed a Los Angeles "head hunting" firm, to set up a personnel operation for the Reagan administration. James assembled a staff and organized the "Reagan-Bush Planning Task Force" located in Alexandria, Virginia in August 1980." It was funded and run entirely separately from the campaign, and therein were planted the seeds of future discord in the Republican Party. Such conflict may be inevitable in any modern presidential administration. Governing is not the same as campaigning, and a presidential candidate must have people planning future administration policy and personnel decisions in addition to campaign workers who are otherwise occupied.

The conflict arises after the electoral victory when those who ran the campaign feel they ought be have priority in running the government. In the Carter administration this conflict erupted in the battle for White House turf between Hamilton Jordan, who ran the campaign, and Jack Watson, who ran the transition operation. In the Reagan administration the conflict surfaced shortly after the inauguration when the right wing of the Republican Party began to complain that loyal Reagan campaigners were not getting their fair share of appointments.

This conflict was not salient in President Reagan's selection of his Cabinet and immediate White House staff. Each President clearly must make these selections personally. The immediate staff must be tuned in to the President's personality and style and possess the complete confidence of the President." The criteria for cabinet positions are different and include important political and symbolic considerations. President Reagan made his selections with the help of his "kitchen cabinet" that met on the west coast. John Ehrlichman has observed that Presidents begin their administrations with strong cabinets and weak White House staffs and end them with strong staffs and weak cabinets."

While President-Elect Reagan promised to re-institute "cabinet government," as Carter had in 1976, the President's advisors took extraordinary measures to assure that new cabinet appointees were in tune with the White House. In the first few weeks of the administration, frequent cabinet meetings were held to set out the "party line." Budget cutting, as described above, was done from the White House with little participation from newly appointed cabinet officers or their staffs. The White House also decided to keep tight control over subcabinet appointments rather than let cabinet members pick their own people, as President Carter had. Whatever President Reagan meant

by "cabinet government," it did not include the delegation of budget or personnel authority.

The struggle over subcabinet positions created the greatest internal controversies in the early Reagan administration. Two main dilemmas dominate subcabinet personnel selection in any administration: will selections be made primarily by the White House or by department and agency heads and, what is the proper balance between political loyalty and administrative competence. Most executives naturally want the discretion to put together their own teams; Robert McNamara said choosing his own subordinates was the most important request he had made of John Kennedy.[8] President Nixon, immediately after giving his new cabinet authority over appointees, said to an aide, "I just made a big mistake."[9] President Carter, as part of his approach to cabinet government, gave the primary discretion for personnel selection to his cabinet secretaries.[10]

The Reagan administration, in conscious contrast, made it clear from the beginning that subcabinet selection would be controlled from the White House. Meese, as Chief of Staff of the Reagan transition team, was favorably impressed with a study on organizing and staffing prepared by the Center for the Study of the Presidency. It pointed up the trials of the Carter administration in subcabinet appointments. "Nixon, like Carter, lost the appointments process," according to Penn James.[11] This time it would be different: "When the cabinet secretaries were selected, Meese made it clear, 'Now look, this is how the appointment process is going to be run.' And they were fully aware as to how the White House was going to handle the appointment process before they were appointed. That was the package that they bought."[12]

The intent was not to make all of the selections in the White House, but to assure that all selections made were fully acceptable to the White House. The President's kitchen cabinet also played a role in the selection: "our most crucial concern was to assure that conservative ideology was properly represented. The three criteria we followed were, one, was he a Reagan man? Two, a Republican? And three, a conservative?"[13] The influence of the kitchen cabinet diminished, however, when it lost its offices in the Old Executive Office Building in March 1981.

It was inevitable that such an approach would cause some conflicts. In general, those cabinet secretaries that were strongest had the best chance to win the disputed cases. Alexander Haig (with the exception of his deputy, William Clark) got his choices through the White House personnel process, if not through the Senate, with dispatch. Defense Secretary Weinberger is reported to have prompted the resignation of a White House personnel staffer by saying "I will not accept any more recommendations from the White House, so don't bother sending them."[14] Other cabinet members, however, did not have the political or personal clout with the White House to be able to insist on their choices when they disagreed over appointments.

The question of who selected appointees was closely intertwined with the other major dilemma of loyalty versus competence. At the beginning of administrations, new Presidents tend to have two fears: that "the bureaucrats" will undermine their policies and that their appointees will "go native" and become coopted by the departments they head. Thus personal loyalty is a centripetal force that helps counter the centrifugal forces that draw presidential appointees to the programs and colleagues in the agencies in which they work. The problem is that in order to have programmatic and management control you need more than just "your guy" in the position. The person must also have a blend of substantive knowledge and administrative skill in order to do effectively the President's bidding in the very complex and competitive bureaucratic world.

One indicator of knowledge and skill is previous administrative experience in business or government. Pendleton James, as head of the White House recruitment effort, sought out executives

with proven track records who would be loyal to the President. "We had five criteria all along—compatibility with the President's philosophy, integrity, toughness, competence, and being a team player."[16] James, who had worked in the personnel operations of the Nixon and Ford administrations, naturally found many competent people among those who had served in previous Republican administrations. The problem with them, from the perspective of the Republican right wing, was that some of them had not supported Ronald Reagan soon enough.

In late January and February 1981 conservative right wing supporters of Reagan's candidacy began to complain vociferously that Reagan campaigners were being systematically excluded from the personnel selection process. John Lofton in the February issue of the *Conservative Digest* claimed that the Reagan administration was being filled with "retreads" from the Ford and Nixon administrations and called for James to be fired. He declared, "There will be no Reaganism without Reaganites."[17]

The person carrying the conservative banner on the inside was Lyn Nofziger, who ran White House political operations from his office in the Old EOB. He met regularly with conservative groups, and in March 1981 told the President that conservatives were being frozen out of his administration. His criteria for administration personnel differed significantly from those of James. He felt the personnel process should root out not only Democrats but Republicans who in the past had supported other candidates than Reagan. "I have problems with them. This, damn it, is a Reagan Administration."[18] Nofziger's conception of competence also differed somewhat from that of James: "We have told members of the Cabinet we expect them to help us place people who are competent. . . . As far as I'm concerned, anyone who supported Reagan is competent."[19]

Due to Nofziger's efforts and pressure from conservative groups, after the first two months the appointment process took a turn to the right, at least enough to mollify right wing critics.[20] James' deputy was replaced by John S. Herrington, who was more acceptable to the right wing interest groups. James denied that any policy shift took place, saying that loyalty was always a primary criterion in hiring and that the recent conservative appointees were already in the personnel pipeline rather than the result of any policy shift.

To keep things in perspective, not all administrative positions were the focus of pitched battles between Nofziger and the moderates, and the right wing did not always win. Caspar Weinberger was successful in getting Frank Carlucci, a distinguished career public servant to be his deputy, though Alexander Haig was not successful in preventing the appointment of William Clark as his deputy. Clark, a justice on the California Supreme Court, had virtually no experience in foreign affairs. Ironically, he was later to be appointed as President Reagan's national security advisor and was to be instrumental in Haig's resignation.

The overall result of the personnel selection process was an administration staffed with officials selected more systematically for their personal loyalty to the President than any other recent administration. Not incidentally, it was an administration with relatively little prior government experience, at least at the subcabinet level. As of June 26, 1981, of those appointees confirmed by the Senate, 76 of 112 (59%) of those in the subcabinet, 18 of 23 (78%) in independent agencies, and 7 of 7 in independent regulatory agencies had no prior government experience.[21]

This reflected Ronald Reagan's anti-government campaign and his promise to change "business as usual." "There's an awful lot of brains and talent in people who haven't learned all the things you can't do."[22] This should have made Senator Jesse Helms happy. One of his staff complained about the early Reagan appointments to the *Wall Street Journal*: "All these people are the experts of the mistakes of the past. Why can't he at least get some new people who could have a chance to make some different mistakes?"[23] The Reagan administration also made some unusual appointments in nam-

ing to positions people who were hostile to, or at least highly critical of, the traditional missions of the agencies they were to head, for example James Watt at Interior and Anne Gorsuch at the Environmental Protection Agency.

In addition to disputes over whom to appoint to which position, there were also complaints about the slowness of the process itself. In the spring of 1981 there was a widespread perception that appointments were not coming as fast as they ought to.[68] There were complaints from the Hill that officials who should have been available to testify on administration programs were not yet appointed. There were complaints from the administration that the few top officials on board were spending all of their time testifying on the Hill. And there were complaints from the bureaucracy that essential program leadership was missing, resulting in policy drift and inefficiency. Pendleton James continued to deny that the pace of appointments was particularly slow and maintained that quality of personnel was more important than speed.

Some of the delays were caused by financial disclosure requirements and conflict of interest regulations that resulted from what James called "post-Watergate hysteria."[69] Some delay was inevitable, due to the range of clearances built into the personnel process. Each nomination had to run a formidable gauntlet running from the cabinet secretary and the personnel office to Nofziger to White House counsel Fred Fielding, to either Martin Anderson (domestic) or Richard Allen (national security) to the triad (James Baker, Michael Deaver, Edwin Meese) to the congressional liaison office, and finally to the President, himself.[70] Sometimes names of candidates would make it most of the way through the process only to be vetoed at the last minute by the political affairs office or the kitchen cabinet.[71] Once through the White House personnel process, international affairs nominations requiring Senate approval were often held up by Senator Helms who thought State Department nominees were not conservative enough.[72]

Despite administration claims that it was making major appointments faster than Presidents Carter and Kennedy,[69] *The National Journal* reported that after ten weeks Reagan had submitted to the Senate 95, as opposed to Carter's 142 nominations.[70] *Time* magazine calculated that, as of the first week in May, of the top 400 officials, only 55% had been announced, 36% formally nominated, and 21% actually confirmed.[71]

In January 1977 the Civil Service Commission approved a rule allowing agencies to create another set of Schedule C positions identical to those already authorized for 120 days "in order to facilitate the orderly transition of duties as a consequence of a change in Presidential Administration."[72] Thus during a transition each department and agency can have twice as many Schedule C appointments as usual for its first 120 days. On June 16, 1981 OPM Director Donald Devine authorized the extension of the period for another 120 days "since a number of key political officials have not yet been appointed to federal agencies, thereby continuing the transition period for the new Administration."[73]

Although the slow pace of appointments was disruptive in many ways, some administration officials saw the silver lining, or found virtue in necessity. They argued that the lack of appointees made it very difficult for agencies to resist the severe budget cuts that the White House was advocating.[74] While the slowness of appointments may have helped the President's budget program, it did little to facilitate the transition in the administration of the executive branch.

Administrative Control

Most modern Presidents come to office with an abiding distrust of the bureaucracy. They are convinced that their policy initiatives will be delayed, ignored, or even sabotoged. After two decades of Democratic rule President Eisenhower felt the need for his own people at the operational levels, not merely the top of the government. Schedule C positions were created for this purpose.[75]

John Kennedy felt that the career bureaucracy was too stolid for his new initia-

tives and drew domestic policy making into his White House staff. In one analysis his administrative strategy amounted to guerilla warfare with numerous "back channels" and special task forces usurping the powers of the career bureaucracy.[6] Richard Nixon's distrust of the bureaucracy was legendary. When his Congressional initiatives failed to fructify, he decided to "*take over* the bureaucracy and *take on* the Congress" with tactics such as impounding funds and his responsiveness program." Jimmy Carter came to Washington as a self-proclaimed outsider promising to reduce the number of federal agencies from 1900 to 200. While this promise was quickly forgotten, the Civil Service Reform Act of 1978 did create several important tools of administrative control that the White House could use, particularly the SES provisions.

Ronald Reagan also came to office as an outsider, claiming that government was the problem with U.S. society, not the solution. Aside from the administration's budget campaign and personnel strategies, there did not seem to be a separate administrative strategy. The administration, however, did make a series of tactical moves aimed at establishing immediate and unambiguous control over the executive branch. A freeze was imposed on civilian hiring and lowered personnel ceilings led to the firing of thousands of Civil Service employees. The President also fired the striking air traffic controllers as well as the newly created inspectors general who had supposedly non-partisan roles. Finally, he "zeroed out" the Community Services Administration, which had taken over the functions of President Johnson's Office of Economic Opportunity. While each of these actions had important immediate consequences, the larger purpose was the symbolic statement that the Reagan administration was in charge and there would be no more "business as usual."

In his first official act after being inaugurated, President Reagan signed a memorandum imposing a "strict freeze on the hiring of Federal civilian employees to be applied across the board in the executive branch." The purpose of the freeze was "controlling the size of government and stopping the drain on the economy by the public sector."[7] An accompanying White House press release said that compensation and benefits for Federal civilian workers comprised a "major" part of the Federal budget." The administration saw the freeze as a means to show the bureaucracy who was in charge, show the public it would fulfill its promises, and begin a series of broader cutbacks aimed at domestic spending and personnel.

A memo of January 24, 1981 made it clear that the administration intended the freeze to be retroactive, when it included in the freeze all those who had not been formally hired by election day, November 5, 1980. Thus many (some estimate up to 20,000) were caught in the freeze who had duly authorized letters offering them jobs, but who did not yet have formally signed Standard Form 50's (Notification of Personnel Action). Several cases were brought in court challenging the retroactivity of the freeze as a breach of contract with those who had good faith offers of employment, though not a signed SF50. They also charged that many prospective employees underwent extensive personal hardship in giving up their old jobs and traveling to Washington in order to accept jobs that were then retracted by the administration. The petitioners, however, lost on February 25 when U.S. District Court Judge Charles B. Richey ruled that the freeze was "not only constitutional and legally permissable but . . . essential to the well being and general welfare of the American people at this time."[8]

OMB Director Stockman explained that the freeze was made necessary by "a situation demanding sacrifices to help in bringing under control immediately the size and cost of government."[9] While this provided little comfort to those who gave up jobs on the basis of letters promising them positions, Director Stockman said cases of "severe hardship" would be considered for exceptions to the freeze. A memo on January 29, 1981 specified that potential exemptions had to demonstrate "severe and irreparable financial loss" and at the same time had to show the per-

son "was prudent in his or her actions (for example, in terms of timing of severing other employment; or taking on new financial commitments in anticipation of a new job)."[8] This catch-22 type condition, in addition to other restrictions, made exceptions to the freeze few and far between.

The freeze was successful in showing the public and the bureaucracy that the administration was serious about cutbacks. It was criticized by others for causing more disruption than it was worth in terms of saving money or reducing personnel. W. Bowman Cutter, who was Executive Associate Director for Budget in the Carter administration, wrote that the freeze was "fake, gimmicky symbolism."[9] He argued that in his experience of running three freezes for the Carter administration, he found that exceptions were always necessary (for example, in the Defense Department which employs half of the government's civilians) and that vacancies occur randomly, rather than in positions management wants to cut. The General Accounting Office in a series of reports has argued that the best way to manage reductions in government is through work force planning and budget control, rather than through the imposition of personnel ceilings and hiring freezes. In this way the managers closest to operations can decide how best to cut back activities without disrupting essential services.[10] GAO contended that the Carter and Reagan freezes were not successful in substantially reducing employment and that it was not clear whether any money was saved.[11]

In the late spring and summer of 1981 the hiring freeze was selectively lifted in agencies for which there were established personnel ceilings. For most domestic agencies these ceilings were well below those on board at the time. This necessarily involved the reduction of employees by natural attrition (not replacing employees who leave voluntarily) or formal reduction in force (RIF). Both of these procedures are costly and disruptive, though the administration felt that overall reductions were more important than the efficiency or smooth functioning of individual agencies.[12]

The Reagan administration also sought to assert its control over the government by firing all of the inspectors general whose positions were created by statute in 1976 and 1978. The purposes of the positions were to centralize audit functions in major agencies and have the IG's report to Congress on their efforts to uncover fraud, waste and abuse. The IG positions were intended to be apolitical, though the President could remove an incumbent if he communicated the reasons to Congress.

Some Democrats in Congress saw Reagan's firing of all the incumbent IG's as an attempt to politicize the auditing function by appointing his own people who could then suppress any embarrassments to the administration.[13] The White House replied that it was a conscious attempt to establish the precedent that each President could name his own IG's. After making the precedent-setting point, President Reagan reappointed some of the same IG's he had just fired.

Later, in the summer of 1981, the President again asserted his administrative control by firing air traffic controllers who had voted to go on strike. His action established the principle that strikes would not be tolerated and effectively broke the Professional Air Traffic Controllers Association (PATCO).

Finally, the administration established its direction by "zeroing out," i.e. abolishing, the Community Services Administration. There was a marked contrast with Richard Nixon's earlier efforts to do away with the Office of Economic Opportunity by impounding its funds. Nixon's efforts directly confronted a united Congress and were defeated in Federal court decisions.[14] President Reagan was able to persuade the Congress to go along with his proposals and thus avoided any question of the constitutionality of the administration's appointment or spending decisions.

On March 18 OMB Director Stockman sent a "Dear Mr. Director" letter to CSA, even though there was no appointed, or even acting, director. The letter stated:

"we will not seek to renew the authorization of the Community Services Administration," and that CSA plans "should provide for the separation of all personnel by the end of Fiscal Year 1981."[8] CSA functions were to be included in state administered block grants proposed by the administration. Although there was much gallows humor at CSA in the last half of FY1981, under the leadership of the veteran Dwight Ink, agency managers ran the shutdown professionally, and CSA closed its doors on September 30, 1981.[9]

While the above actions, despite their drawbacks, were successful from the administration's viewpoint, one big hole in its approach to administrative control was the slowness in getting new appointees into subcabinet positions. This was due to clearance procedures and the conflicts over particular appointees described above. This helped the administration's budget strategy by eliminating potential advocates for agency budgets, but it did little to give the administration programmatic control of the government.

One of the major drawbacks in any presidential transition is that bureaucratic agencies and programs tend to go into neutral gear until new leadership provides policy direction. This tendency toward policy drift is extended by delays in appointments. Career executives do not want to move too far in any direction for fear that the new boss will not approve. A consideration of this syndrome from the bureaucratic perspective is provided in subsequent sections.

In one lesson it learned from the Carter and Nixon experiences, the new Reagan administration did not dissipate its energies pushing any grand scale reorganization of the government. Carter had promised to reduce the number of federal agencies from 1900 to 200. Nixon had tried to consolidate twelve cabinet departments into eight, but Congress would not go along. Reagan promised to abolish the Departments of Energy and Education but he did not squander his political resources on these projects in his first two years.

The general strategy of trying to reduce the span of control of the President by bunching similar agencies with similar functions together under one umbrella agency has the advantage of settling some turf battles before they get to the President's desk. Major policy disputes, however, cannot be swept under an organizational rug. The agency itself, its clientele groups, and Congressional committees will continue to dominate the action, and the President still will have to decide if he wants to throw his weight one way or another. Thus major reorganizations are usually more trouble than they are worth, both in the Congress and in the executive branch.

This does not mean that no reorganizations took place, only that they were implemented at the micro-level, i.e. within departments and agencies, where they count. While large scale reorganization is often touted as a panacea, small scale reorganizations are often effective tools of good management. They engender uncertainty and thus inefficiency in agencies when they are implemented, so they should be used with sensitivity and only when necessary. But in certain circumstances they are useful in gaining control of an agency and can accomplish purposes that personnel rules and regulations make difficult. In 1981 Budget cuts provided useful justifications for agency heads to reorganize their organizations for their own purposes.[10]

IV. The View From the Bureaucracy

To career employees in the executive branch, the transition period is a time of uncertainty. The last few months before an election the bureaucratic machine begins to slow until the election of a new President, at which time it is in neutral gear. In sharp contrast, internal maneuvering increases to a high speed. The result is a machine operating at a high level of r.p.m.'s but with little direction to convert all of the energy to useful productivity.

During periods of presidential transition the upper levels of the bureaucracy are marked by active maneuvering: careers can be made or broken. Attitudes at lower levels are marked by cynicism and the feeling that there will be arbitrary

37-533 O - 85 - 13

changes of policy and organization. Each set of attitudes results from the intense uncertainty. This condition does not usually preclude the carrying out of routine functions or the accomplishment of well established agency goals. The inefficiency comes at the cutting edge of policy formulation and program innovation.

The uncertainty at the top results from a lack of leadership and direction. Senior executives do not want to stick their necks out too far in any one policy direction for fear that the new boss will come in and reverse directions. Those who had come to occupy positions of trust and power over the four years of the out-going administration are fearful that they will be identified as partisans of the previous discredited and rejected administration. The reluctance to take any initiatives, even those that seem to make good political and organizational sense and that would be in the best interests of any new incumbent, is reinforced by uncertainty about who will be appointed to run the agency.

Every career executive has seen a range of quality in presidential appointments, from the highly professional expert with a wealth of experience in government or business, to the complete neophyte who is also a political hack. The probable future actions of the former can be calculated much more easily than those of the latter. But people whose career depend on it tend to minimize their maximum losses rather than to pursue the high risk strategy of backing an initiative that may be repudiated by the new boss. Senior executives want to jump on the band wagon of the new boss, but they do not yet know in what direction it is heading.

The period of uncertainty can lead to opportunities to enhance one's career or settle old scores. Old animosities can reemerge, and colleagues can be seen as rivals. Areas of disputed turf can be again opened to challenge. There may be opportunities to reorganize one's bureaucratic enemies out of existence. The focus of all this maneuvering is, of course, the new agency head who will have the power to make or break policies and careers. The speculation about who the new President will appoint is intense, and at the first hint of a rumor people scurry off the telephone to contact their "inside sources" or to *Who's Who* to get a fix on the new boss.

The people on the new administration's transition team are in an ambiguous position because it is never clear if they were assigned to pay off a campaign debt or if they will be appointed the new leaders of the agency. The obvious bureaucratic strategy here is to act as if they had already been appointed and impress them with your responsiveness. One impresses the new (potential) boss with a positive and "can do" attitude. One must also appear professional and not overly obsequious. The usual tack in briefing new appointees is to present one's own operation as efficient and essential to the operation of the agency. In a high risk gambit one might offer up program or personnel cuts to show that one is not the stereotypical empire building bureaucrat.

The executive branch bureaucracy is often portrayed as a unified, monolithic leviathan with the sole goals of survival and expansion. This leads to the expectation that a new political appointee will be faced with a united front. Political appointees who believe this will be at a disadvantage, because the bureaucracy suffers from the same vulnerabilities as a cartel. One small leak can easily become a flood and break the whole edifice. In any agency there are enough senior managers who hold varying political, policy, and professional values that new appointees with any sense of character judgement will not have to face a unified opposition to their policy preferences, whatever they are. This includes the anti-government and anti-welfare policy preferences of the Reagan administration.

In fact, the opposite is likely to be the situation. Senior executives can be expected to render professional and positive support to new political appointees for professional as well as self-interest reasons. Career professionals accept the democratic and constitutional legitimacy of the incoming administration. They also see their own roles as neutral with respect to political party, if not always with respect to programs or institutions. Self in-

terest also provides a strong incentive to be responsive to the new leadership. Senior executives are ambitious and want to be members of the management team. They will only be included if they actively and effectively support the administration's policies.

For these reasons the typical fears of new administrations that "the bureaucrats" will try to undermine their policies are usually exaggerated. There will probably be some dissidents, some personality conflicts, and some differences of opinion; but there is little likelihood of bureaucratic guerilla warfare waged by senior executives against an administration's policies.[9] There will undoubtedly be bureaucratic warfare, but the cleavages will flow along program, policy, and institutional lines with political appointees as well as careerists on both sides of the barricades.

The Reagan administration is the first to come to office enjoying the new flexibilities provided in the Civil Service Reform Act of 1978. Primary among the new management prerogatives are the SES provisions. These allow agency heads to transfer senior executives from position to position much more easily than in the past. Rank in person rather than position provides some security to the executive while allowing the agency head to match the executive to the appropriate position without being bound by the rank of the usual incumbent of that position.

One of the restrictions, however, is that career senior executives cannot be moved involuntarily until 120 days after the new agency head is appointed. The purpose is to ensure that senior executives will have a chance to prove their competence and loyalty to the new administration. During spring in 1981, due to the Civil Service reforms, there was more than the usual amount of paranoia among senior executives. There were newspaper reports in the *Washington Post* and *Star* that the White House was planning "mass transfers" of senior executives at the end of the 120 day waiting period. These fears proved to be groundless, and there is no evidence that the Reagan administration abused its powers over the SES during the transition." Thus a strong precedent has been set for avoiding the politicization of the SES, particularly since the Reagan campaign promised to end "business as usual," and had sharply contrasting policy preferences to the preceding several administrations. In fact, one of the major themes of the transition teams was to reassure the career service that the new administration, despite its campaign rhetoric, valued, and would preserve, the integrity of the merit system.

The new Reagan administration did, however, make systematic efforts to renew and enforce the split between politics and administration that the public administration community found so attractive in the earlier decades of the 20th century.[10] Often the newly appointed administration members of an agency would meet to make policy decisions without any input from career executives, bringing them in to implement decisions only after all important decisions had been made. This approach was due to the typical distrust of the bureaucracy felt by most new administrations.

This did little to enhance the quality of management decision making. For reasons stated above, there is little to fear from most career executives. But more importantly, the administration deprived itself of valuable advice as well as support by excluding career executives from the early stages of policy formulation. In most cases career executives are experienced experts in their areas and have many good ideas for beneficial changes. Such potentially valuable input might be stifled if they are systematically excluded from consultation. In addition, career executives often have shrewd political judgement as well as valuable contacts in other agencies and on the Hill. Ignoring these resources at their disposal can make the job of political appointees much more difficult. No amount of consultation, however, can relieve members of the administration of the authority or the duty to make final decisions.[11] Each new administration goes through a cycle. Gradually, as the abilities and drawbacks of career executives become known and as trust begins to develop with the experience

of working together, the artificial barriers of the politics/administration dichotomy break down. The sooner this happens, the sooner any administration will be able to mobilize fully the political and substantive expertise of the career service to achieve its policy goals.

Reassurances about the integrity of the merit system and the absence of abuse of the SES, however, were of little comfort to those at lower levels in the bureaucracy who were facing the uncertainty of reductions in force. The Reagan campaign promises to cut back federal agencies and personnel were always clear and were forcefully reiterated with the immediate hiring freeze. The new reduced personnel ceilings and the budget cuts established by OMB in March and April 1981 made it clear that personnel reductions would be necessary in most domestic agencies, either through natural attrition or formal reductions in force (RIF's). Either method would place government workers in jeopardy of losing their jobs or of being reduced in rank or position.[14] The uncertainty, needless to say, resulted in severe morale problems.

Those who were not fired were nevertheless threatened because the programs they worked in were vulnerable to being eliminated, either by outright termination, or by the slow deletion of functions and authority. One of the problems here is that employees, particularly at mid and lower levels, perceive that the fate of their careers or their programs has nothing to do with their performance. This lack of a sense of efficacy can easily lead to cynicism in which arbitrary "politics" seems to control everything. With this attitude, why should one work hard if one's own performance cannot control one's fate?

Thus the cutbacks of the Reagan administration in 1981 had the unfortunate effect of seriously undermining morale in many domestic agencies. While morale is difficult, if not impossible, to measure, it is an important factor in any organization.[15] When it drops, people become detached from their jobs and do not see any need to work toward organizational goals. They become worried about their personal careers and look for opportunities in other organizations. It is difficult to recruit bright, young managers to organizations that seem to be in decline. This was probably the major administrative challenge the Reagan administration faced in its early years.[16]

All transitions cause some uncertainty and disruption, but within departments and agencies they can be handled with more or less grace. The incoming agency head can choose to handle appointees of the outgoing administration and career executives who will be replaced with professional respect and can make their exits as smooth as possible. Giving them chances to find new positions and using selective options for early retirement are ways to do this. The agency head can choose the least painful way to reorganize the agency or separate personnel. On the other hand, the new agency head can come with six-guns blazing and demand resignations of all holdovers by close of business that day. He can have their offices locked and their desks cleared out. He can put heavy handed pressure on careerists to leave quickly, and can reassign them to undesirable geographic locations on the 121st day after his appointment.

It probably takes an executive who is confident in himself and his position in the administration to take the low-key, gracious route. There is, after all, no question of who is running the agency, and there is plenty of legal power to back it up. Those who are insecure in themselves or their positions may feel the need to assert their authority through heavy handed actions and abrupt firings. They will inspire fear in their subordinates rather than respect. While the Machiavellian approach to control through fear may enhance personal power, it will not lead to the sort of teamwork necessary to run an organization in the complex and sometimes treacherous milieu of Washington. More importantly, it will be a disservice to the administration of which the appointee is a member.

V. Conclusion

The overwhelming fact about presidential transitions from a management perspective is that they are extremely costly in

terms of productivity sacrificed and momentum lost. Important changes in policy direction mean writing off sunk costs. Changes in top management entail policy drift and turf battles at the agency level. The benefits of a representative government, however, are well worth the cost of the disruptions involved in presidential transitions.

While presidential transitions are necessarily inefficient, they can be accomplished more or less quickly and effectively and can be conducted with more or less grace. From this perspective, what can future presidents-elect learn from the Carter/Reagan experience? First of all, the transition must begin before the election and be professionally staffed. The development of policy issues and the search for personnel cannot be left until after the election. It must be kept in mind, however, that the governmental transition staff and the political campaign staff will battle over who will run the government. The President-Elect must expect such conflict and make his choices clear.

Watson and Meese both performed ably in the transition. Both are lawyers with good minds and experience. The Reagan administration must be given very high marks for the execution of its legislative and budget programs. (Whether or not these programs were successful in reviving the U.S. economy is another question.") The political personnel process gets a mixed review. It selected loyal administrators but sacrificed professionalism and time. Administrative leadership and managerial direction were sacrificed to budget, personnel, and cutback priorities. Many agencies were so disrupted by the process that their operations were seriously affected in the short run, and long term management recruitment may have been hurt. It is probable, however, that this was not an unintended consequence, as seen by the administration, but viewed as a necessary tradeoff.

What can future administrations learn from the Reagan experience in the areas of legislation, budget, personnel and administration. One lesson is that Congress will still pass a President's legislative package. Some had concluded that since Lyndon Johnson the fragmenting pressures in Congress—structural reforms, high turnover, single interest pressure groups—had marked the end of the President's role as legislative leader. President Reagan proved that White House control of legislation was possible in spite of unpopular budget cuts and a Democratic House. But it took most of President Reagan's political resources during his first six months in office to win the budget battle on the Hill. These victories, however, did not accomplish the economic turnaround that supply-siders had predicted, and his budget policies led to the largest deficits in U.S. history. Not until the end of the second year of the Reagan administration did the economic recovery begin, although the stock market proved an earlier harbinger.

What did the elaborate presidential personnel system accomplish? The White House kept closer control over subcabinet appointments than any other recent administration. Thus many Reagan loyalists were appointed, but at the cost of administrative experience and letting cabinet members choose their own management teams. While the Carter and Nixon personnel systems may have been too lax in this regard, the Reagan system may have been too strict. The delay in appointments that was caused in major part by the administration's political clearance procedures took a toll in departmental leadership and program development. However, the Reagan administration was spared the severe stress of staff vs. Cabinet which characterized the Carter administration. Further, the Meese originated cabinet councils provided an effective system of relating Cabinet and staff in policy development.

The larger question to be addressed is whether the above described actions amount to administrative, policy, and programatic control of the government. The Reagan transition period did provide significant budgetary cutbacks for domestic agencies, and the personnel system ensured personal loyalty to the President from the subcabinet. But there did not seem to be much positive policy direction to set the tone for the Reagan administra-

tion. Even in defense, the early budget actions seemed to be the addition of more money to the previous administration's priorities rather than a carefully targetted redirection of defense policy.[196]

Setting a positive policy direction is difficult for an administration whose avowed goals are essentially negative. If government is part of the problem, then doing less is better. Major changes in domestic policy were made at EPA and the Department of Interior, but these were accomplished primarily through cutbacks and the decision to modify enforcement of regulations. In cutback situations where government is seen as part of the problem, positive leadership is, at best, inherently difficult. Having "hit the ground running,"[197] this was the challenge confronting the Reagan administration.

Notes

1. See Austin Ranney, *The American Elections of 1980* (Washington: American Enterprise Institute, 1981), Gerald Pomper, et al., *The Election of 1980: Reports and Interpretations* (Chatham, N.J.: Chatham House, 1981), Ellis Sandoz and Cecil V. Crabb, Jr., *A Tide of Discontent: The 1980 Elections and Their Meaning* (Washington: Congressional Quarterly Press, 1981), and Royce Crocker, "Federal Government Spending and Public Opinion," Public Budgeting and Finance (Autumn 1981), Vol. I No. 3, pp. 25-35.
2. See Luevano v. Campbell, Civil Action No. 79-0271.
3. FPM Bulletin 273-18, January 4, 1980.
4. OPM Operations Letter No. 332-246, September 17, 1980 signed by Richard B. Post.
5. GAO Report FPCD-81-51 (B-202713) May 27, 1981 signed Clifford I. Gould. The OPM investigation covered the U.S. Commission on Civil Rights, the Department of Education, and the EEOC. The GAO investigation covered the FTC, SBA, USDA, and DOT.
6. Memorandum for Cabinet and Agency Heads, Subject: "An Orderly Transition of the Presidency," November 10, 1980, signed "Jack" Watson.
7. See Richard E. Neustadt, "The Reagan Transition," *Presidency Research Group Newsletter* (April 1981), p. 2.
8. The White House, "Memorandum for Cabinet and Agency Heads," November 12, 1981, signed "Jack" Watson.
9. Memorandum for Department and Agency Heads, Subject: "Resignation Policy," December 10, 1980, signed "Jack" Watson.
10. Public Law 88-277, 78 Stat. 153.
11. *Congressional Quarterly Weekly Report*, December 27, 1980, p. 3657.
12. For a treatment of transitions from Kennedy through Carter see Richard E. Neustadt, *Presidential Power* (New York: Wiley, 1980), Chapter 11: "Hazards of Transition," pp. 208-243. For a study of transitions from Wilson through Eisenhower see Laurin L. Henry, *Presidential Transitions* (Washington: Brookings, 1960). For an inside view of a transition see Richard E. Neustadt, Memorandum on "Staffing the President-Elect," October 30, 1960, available in the Kennedy Library, Boston, MA.
13. *Washington Post*, November 16, 1980, p. A9.
14. *Washington Post*, December 15, 1980.
15. *Congressional Quarterly*, December 27, 1980, p. 3656.
16. See "Minutes of IAG Meeting on the Transition," Office of Personnel Management, November 14, 1980. The author was present at this meeting.
17. *Congressional Quarterly*, October 4, 1980, p. 2920.
18. Ibid.
19. Hendrick Smith, "Taking Charge of Congress," *New York Times*, August 9, 1981.
20. Ibid.
21. *Congressional Quarterly*, August 1, 1981, p. 1372.
22. Smith, "Taking Charge of Congress," *New York Times*, August 9, 1981.
23. See *Washington Post*, April 26, 1981, p. A10, *Congressional Quarterly*, July 25, 1981, p. 1325.
24. *Congressional Quarterly*, June 13, 1981, p. 1025.
25. James MacGregor Burns has made this argument. See the *Los Angeles Times*, January 19, 1982, Part IV, p. 1.
26. See William Greider, "The Education of David Stockman," *The Atlantic* (December 1981).
27. For a more complete analysis of the Reagan administration's budget strategy and tactics, see: James P. Pfiffner, "The Reagan Budget Juggernaut: The Fiscal 1982 Budget Campaign," paper presented at the 1982 Convention of the American Society for Public Administration, Honolulu, Hawaii.
28. See *Washington Post*, Sec. C, p. 1, December 14, 1980.
29. Walter Shapiro, "The Stockman Express," *Washington Post Magazine*, February 8, 1981, p. 8.
30. Elizabeth Drew, "A Reporter in Washington," *The New Yorker* (June 8, 1981), p. 138.
31. OMB Bulletin No. 81-6 (January 24, 1981).
32. OMB Bulletin No. 81-7 (January 24, 1981).
33. OMB Bulletin No. 81-8 (January 24, 1981).
34. OMB Bulletin No. 81-9 (January 30, 1981), see also OMB Bulletin 81-11 (February 11, 1981).
35. Memorandum for Heads of Non-Cabinet Agencies, "Revisions of the 1982 Budget," (February 7, 1981), signed by President Reagan.
36. See James P. Pfiffner, "The Challenge of Federal Management in the 1980s," *Public Administration Quarterly* (forthcoming).

37. Stockman quoted in *The Atlantic*, p. 33.
38. Ibid.
39. *Congressional Quarterly*, July 4, 1981, p. 1167.
40. *Congressional Quarterly*, June 27, 1981, p. 1127.
41. Greider, *The Atlantic*, p. 50.
42. *Congressional Quarterly*, August 1, 1981, p. 1377.
43. See James P. Pfiffner, "Presidential Personnel Policy," *Presidency Research Group Newsletter* (Spring 1982) Vol. IV No. 2, p. 5.
44. The Plum Book also lists those in Schedule A positions (about 100,000) and Schedule B (about 17,000). These are part of the excepted service because it is not practical to hold examinations for the positions; they include attorneys, chaplains, National Bank examiners, and students in cooperative education programs. Schedules A and B do not turn over with each incoming administration.
45. See Bruce Adams and Kathryn Kavanagh-Baran, *Promise and Performance: Carter Builds a New Administration* (Lexington, MA: Lexington Books, 1979).
46. See *Dun's Review*, "Staffing the Reagan Administration," (May 1981), p. 91.
47. For an excellent analysis of the roles of the White House staff and the cabinet, see: Brad Patterson, *The President's Cabinet: Issues and Questions* (Washington: American Society for Public Administration, 1976), see also "Comments Presented at the Panel on White House Staff/Cabinet Relationships," American Political Science Association Convention, September 1981, New York City. See also Bradley D. Nash, with Milton S. Eisenhower, R. Gordon Hoxie, and William C. Spragens, *Organizing and Staffing the Presidency* (New York: Center for the Study of the Presidency, 1980).
48. Comments made at panel on the Presidency, American Political Science Association Convention, September 1981, New York City. See also *Witness to Power* (New York: Simon and Schuster, 1982), Chapter 7.
49. See Joseph Califano, *Governing America* (New York, Simon and Schuster, 1981), pp. 16–17. For an insightful and thorough treatment of presidential personnel recruitment operations and the role of the Senate in confirmations, see Calvin MacKenzie, *The Politics of Presidential Appointments* (New York: The Free Press, 1981).
50. Richard P. Nathan, *The Plot That Failed* (New York: Wiley, 1975), p. 50.
51. See Dick Kirschten, "Wanted: 275 Reagan Team Players; Empire Builders Need Not Apply," *National Journal* (December 6, 1980), pp. 2077–79. See Hoxie, "Staffing the Ford and Carter Presidencies," in Nash, *Organizing and Staffing*, pp. 72–75.
52. Pendleton James quoted by Lou Cannon, "Appointments by White House Take Right Turn," *Washington Post* (June 18, 1981), pp. 1, 12, 13. The Center for the Study of the Presidency study is noted in footnotes 47 and 51 above.
53. Quoted in Calvin MacKenzie, "Cabinet and Subcabinet Personnel Selection in Reagan's First Year," paper presented at the 1981 American Political Science Association Convention, New York City, p. 24.
54. Henry Salvatori quoted ibid.
55. Rowland Evans and Robert Novak, "Cleaning Out the Kitchen," *Washington Post* (March 20, 1981).
56. Pendleton James quoted by Hedrick Smith, "Conservatives Cite Gains in Top Posts," *New York Times* (March 8, 1981), p. 24.
57. Dom Bonafede, "The New Right Preaches a New Religion, and Ronald Reagan is its Prophet," *National Journal* (May 2, 1981), p. 779. See also Evans and Novak, "Reganism Without Reganites," *Washington Post* (January 23, 1981).
58. Quoted by Howell Raines, "Nofziger Thrives on Tough Reputation," *New York Times* (June 25, 1981), p. B12.
59. Quoted by Elizabeth Drew, "A Reporter at Large," *The New Yorker* (March 16, 1981), pp. 91–92.
60. See MacKenzie, "Cabinet and Subcabinet Personnel Selection in Reagan's First Year," pp. 16, 20. See also Lou Cannon, "Appointments by White House Take Right Turn," *Washington Post* (June 18, 1981), pp. 1, 12, 13; Hedrick Smith, "Conservatives Cite Gains in Top Posts," *New York Times* (March 8, 1981), p. 24; and Howell Raines, "White House Headhunter Feels the Heat," *New York Times* (May 3, 1981), p. E3.
61. See MacKenzie, "Cabinet and Subcabinet Personnel Selection," p. 19.
62. Quoted by James Reston, "Reagan's Recruiting Philosophy," *New York Times* (November 12, 1980).
63. Quoted by James M. Perry, "Top Jobs Still Vacant in Federal Agencies As Nominations Lag," *Wall Street Journal* (March 13, 1981).
64. See Lou Cannon, "Reagan's Appointments 'Mess' Decried," *Washington Post* (March 1, 1981); Philip Geyelin, "One-Man Wrecking Crew," *Washington Post* (April 14, 1981); Dick Kirschten, "You Say You Want a Sub-Cabinet Post? Clear it with Marty, Dick, Lyn and Fred," *National Journal* (April 4, 1981), p. 564; James M. Perry, "Top Jobs Still Vacant in Federal Agencies As Nominations Lag," *Wall Street Journal* (April 13, 1981); Howell Raines, "White House Headhunter Feels the Heat," *New York Times* (May 3, 1981); *Time Magazine* "Molasses Pace on Appointments," (May 11, 1981), p. 19.
65. Quoted in James M. Perry, "Top Jobs Still Vacant," *Wall Street Journal* (April 13, 1981); but cf. J. Jackson Walker, "The Ethics in Government Act, Conflict of Interest Laws and Presidential Recruiting," *Public Administrative Review* (November/December 1981), pp. 659–665.

66. See diagram in MacKenzie, "Cabinet and Subcabinet Personnel Selection," 1981 APSA paper; Kirschten, "You Say You Want a Sub-Cabinet Post?," *National Journal* (April 4, 1981), pp. 564–567; and *Dun's Review*, "Staffing the Reagan Administration," (May 1981), p. 91.
67. See Raines, "White House Headhunter Feels the Heat," *New York Times* (May 3, 1981); see also Christopher T. Cross, "If the White House Calls to Offer a Top Job, Hang Up," *Washington Post* (late February or early March, 1981).
68. See Perry, "Top Jobs Still Vacant," *Wall Street Journal* (April 13, 1981).
69. Lou Cannon, "Reagan's Appointments 'Mess' Decried," *Washington Post* (March 1, 1981), p. 1.
70. Kirschten, "You Say You Want a Sub-Cabinet Post?," *National Journal* (April 4, 1981), pp. 564–567.
71. *Time*, "Molasses Pace on Appointments," (May 11, 1981), p. 19.
72. 5 CFR Part 213.
73. *Federal Register*, Vol. 46 No. 115 (June 16, 1981), p. 31405.
74. William Safire, "Of Meese and Men," *New York Times* (February 2, 1981).
75. Richard E. Neustadt, "Do *What* to the Bureaucracy," *Washington Post* (November 10, 1980).
76. See Garry Wills, *The Kennedy Imprisonment* (Boston: Atlantic/Little Brown, 1982).
77. Richard Nathan, *The Plot That Failed* (New York: Wiley, 1975), p. 8, see also pp. 82–84.
78. Memorandum for the Heads of Executive Departments and Agencies, Subject: Hiring Freeze, The White House, (January 20, 1981), signed "Ronald Reagan." Federal civilian employment had decreased from 2.94 million in 1970 to 2.82 million in 1980. As a percentage of total employment it dropped from a high of 3.8 percent in 1968 to 2.8 percent in 1981 and relative to the U.S. population it dropped from 16.3 federal employees per 1000 in 1952 to 12.7 per 1000 in 1980. (OMB, *U.S. Budget: Special Analyses FY1982*, pp. 286–288.)
79. White House, Office of the Press Secretary, "Fact Sheet: Hiring Freeze," (January 20, 1981). Total compensation and benefits compromise about $57 billion of a total budget of about $700 billion.
80. Quoted by Laura A. Kiernan, "Job Freeze by Reagan Is Upheld," *Washington Post* (February 26, 1981).
81. Office of Management and Budget, Memorandum for Heads of Executive Departments and Agencies, Subject: Federal Civilian Hiring Freeze (January 29, 1981).
82. Ibid., parentheses in original.
83. "When a Good Symbol Is a Bad Policy," *Washington Star* (January 27, 1981).
84. For a bibliography of GAO reports on freezes, ceilings and personnel reductions, see: "Federal Work Force Planning: Time for Renewed Emphasis," FPCD-81-4, (December 30, 1980), pp. 46–49.
85. "Recent Government-Wide Hiring Freezes Prove Ineffective in Managing Federal Employment," FPCD-82-21 (March 10, 1982).
86. For an analysis of the tradeoffs involved in choosing between these two methods of personnel reductions, see: James P. Pfiffner, "Inflexible Budgets, Fiscal Stress, and the Tax Revolt," in *The Municipal Money Chase* (Boulder: Westview Press, 1983).
87. *Congressional Quarterly* (February 21, 1981), p. 342.
88. See James P. Pfiffner, *The President, the Budget, and Congress* (Boulder: Westview Press, 1979), pp. 116–117.
89. OMB letter (March 18, 1981), signed "David A. Stockman."
90. See Dwight Ink, "Agency Shutdown: The Ultimate Challenge," *PA Times* (December 15, 1981), p. 3.
91. For a more complete statement of this argument, see James P. Pfiffner, "The Challenge of Federal Management in the 1980s," *Public Administration Quarterly* (forthcoming).
92. For a discussion of professionalism in very trying circumstances, see: Dwight Ink, "Agency Shutdown," *PA Times* (December 15, 1981), p. 3.
93. See GAO, "Effects of the Presidential Transition On the Senior Executive Service," FPCD-82-29 (March 23, 1982); see also Merit Service Protection Board, "An MSPB Special Study on the SES," (April 2, 1981).
94. For a more complete discussion of this issue see: Pfiffner, "The Challenge of Federal Management in the 1980s," *Public Administration Quarterly* (forthcoming).
95. For a classic treatment of the relationship between political appointees and career executives, see: Hugh Heclo, *A Government of Strangers* (Washington: Brookings, 1977).
96. See Pfiffner, "Inflexible Budgets, Fiscal Stress, and the Tax Revolt," in *Managing Municipal Money*, edited by Alberta Sbragia (Boulder: Westview, forthcoming).
97. Ibid.
98. See Pfiffner, "The Challenge of Federal Management in the 1980s," *Public Administration Quarterly* (forthcoming).
99. See James P. Pfiffner, editor, *The President and Economic Policy* (Philadelphia: ISHI Publications, forthcoming).
100. See Elizabeth Drew, "A Reporter in Washington," *The New Yorker* (June 8, 1981), p. 141; see also Joseph Pechman, et al. *Setting National Priorities: The 1982 Budget* (Washington: Brookings, 1981).

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WHAT'S WRONG WITH TRANSITIONS

by Lincoln P. Bloomfield

For nearly 200 years the American system of government, combined with abundant good fortune, adequately served U.S. foreign-policy interests. For the last two decades, however, the system has been flashing danger signals. Increasingly, present American political institutions and decision-making structures seem to entrap all administrations—whatever their virtues or flaws—in a wasteful political life cycle that frustrates even the soundest foreign-policy objectives.

The pattern of what might be termed presidential bureaurhythms is depressingly familiar. U.S. administrations confidently sail into office on a tide of extravagant campaign promises to rectify the failures of the preceding regime. But no matter how desirable these promises, the initial momentum soon falters in the face of criticism at home and abroad, the rediscovery of useful policies of the past, and the difficulty of achieving dramatic results. In addition, Congress, frustrated by its own inability to control events, moves with indecent speed from honeymoon to divorce. The first grace year is invariably followed by 2 years of retreat. After colliding with complexity and ambiguity, presidents are often forced into about-faces by what journalist Walter Lippmann called the suction of the center. By the end of the third year modest results are often achieved and the ship of state is fixed on a more or less steady course. At that point, however, the approaching presidential election triggers a new foreign-policy debate loaded with hyperbole and distortion, effectively undoing much hard-won progress.

The policy discontinuities and inconsistencies that result have prompted any number of provocative suggestions for remedying the situation. Indeed, Americans have not expressed such widespread interest in constitutional changes since Reconstruction. In considering ways of restoring stability to American foreign policy, however, it is important to acknowledge the system's virtues.

Fresh leadership sometimes can break new policy ground that has resisted traditional approaches. Examples include former President Richard Nixon's diplomatic openings to China and the Soviet Union and his achievement of the first Strategic Arms Limitation Talks (SALT) treaty; former President Jimmy Carter's human rights policy and negotiation of the Panama Canal and SALT II treaties; and President Ronald Reagan's restrictions on the flow of sensitive technology and economic credits to those who arm against the West. Sometimes, new leaders even muster the courage—at least until the next election year—to tackle such taboo subjects as the Palestinian question.

There is also a healthy purgative quality to the quadrennial campaign promises to clean up the mess in Washington, correct foreign-policy failures, and restore the respect for America allegedly frittered away by the last president. Prophetic summonses to be born again are enduring features of the U.S. political landscape, as is the deep popular suspicion of government that Alexis de Tocqueville noted in the 1830s. And who would trade an immigrant nation's unquenchable optimism for the immured, conformist permanence of the Soviet elite, or *Nomenklatura*, or even for the expert but tired cynicism of European foreign offices? Finally, one should beware the chronic American delusion that unsuccessful policies—especially failures arising from incorrigible intellectual or moral error—can be remedied by structural reform. At the same time, in certain important respects the policy machine is seriously malfunctioning and needs fixing.

Because of pressures arising from both the American political culture and the refractory nature of the external world, presidential candidates are often driven to discredit the mainstream position to which, if elected, they

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must inevitably retreat. As a result they enter office with many unworkable foreign-policy nostrums. In turn, disillusioned voters repeatedly reach for equally unrealistic panaceas for America's world problems. The result is a growing habit of chewing up and spitting out presidents at an alarming rate, with no president having served two full terms since Dwight Eisenhower, even if the current White House occupant seems better placed than many of his recent predecessors for the re-election effort.

Moreover, although presidents usually wind up having to replace overambitious plans with more practical ideas, the learning process wastes precious time. Former secretaries of state are reportedly in agreement that their first 6 to 9 months typically constituted a "wasteland period" for foreign policy, thanks to the belief of each incoming administration that "world affairs begin anew inauguration day."[1] One of Great Britain's ablest senior diplomats recently observed in conversation that "U.S. administrations are not fully effective in foreign affairs for 25 per cent of the time and perhaps for a good deal more," and asked, "Is this sensible? Is it tolerable ... if America is to be the leader?"

Dramatic midcourse corrections have become a hallmark of the modern U.S. presidency. An idea of the price paid and the opportunities lost because of these policy somersaults can be gleaned from reviewing the records of recent administrations, starting with the present one.

The 180-degree Turns

Reagan entered office with an unusually pronounced pro-Israeli tilt, even by election-year standards, and with a commitment to create an anti-Soviet "strategic consensus" in the Middle East embracing Israel, Egypt, and several moderate Arab states such as Saudi Arabia and Jordan. But on a spring 1981 tour of the region, then Secretary of State Alexander Haig, Jr., was bluntly told what everyone else already knew, that the Arab states were preoccupied not with the Soviet Union but with the fast-disappearing chance to negotiate the creation of a Palestinian homeland.

In March 1984 Reagan threatened to veto any congressionally mandated move of the U.S. embassy to Jerusalem. In 1982 Reagan sent the U.S. Marines into Lebanon as peace keepers, only to watch their mission dissolve in the country's bloody religious strife and to confess before ordering U.S. withdrawal, "I don't think we were prepared for, or believed there would be an outright civil war."

Before his election, Reagan shared the American Right's view of Taiwan as a symbol of conservative fidelity to anticommunism and of American loyalty to its friends. Candidate Reagan even promised to re-establish official relations with Taiwan. Further preinaugural hints suggesting that Reagan would follow a two-China policy led Beijing to declare inoperative the anti-Soviet front it had nurtured during the three preceding administrations and to castigate both superpowers as equally imperialistic—hardly a plus for the administration's anti-Soviet strategy. Eventually the administration recanted, declaring that the Beijing government "is the sole legal government of China," swallowing its earlier plan to sell high-performance jet fighters to Taiwan, and striking a deal favorable to China on textile imports. The president's April 1984 trip to Beijing was the climax of a series of visits by senior administration officials that have greatly accelerated both U.S. high-technology exports to China and plans for expanded Sino-American military cooperation.[2]

Originally, Reagan officials disparaged the U.N. system as run by muddle-headed world order fanatics and sentimental idealists who favored socialistic giveaways to solve international economic problems. By Reagan's third year in office U.S. bankers' panic over their profligate international lending policies stimulated administration support of a modestly expanded U.S. contribution to International Monetary Fund reserves and put pressure on

[1]Miller Center Report *4 (Fall 1983):1.*

[2]*Robert Manning, "China: Reagan's Chance Hit,"* FOREIGN POLICY *54 (Spring 1984).*

Congress for an expanded foreign economic aid program.

The 1980 Republican party platform pledged to exchange "military ... superiority over the Soviet Union" for the position of strategic inferiority to which Reagan's predecessors had allegedly brought the United States. Having condemned the SALT treaties throughout the 1970s for leaving American land-based missiles theoretically vulnerable to Moscow's heavy, increasingly accurate intercontinental ballistic missiles (ICBMs), Reagan filled first his campaign advisory staff and then his administration's top national security slots with leading opponents of the agreements. In its first year, the Reagan team not only condemned the SALT II treaty as "fatally flawed," it also determinedly kept the Threshold Test Ban, Comprehensive Test Ban, and Peaceful Nuclear Explosions treaties on the shelf, even though Moscow had finally agreed to on-site inspection provisions for the last.

The outsider's glib assumption that career civil servants will be disloyal to a new administration is an unwarranted calumny based on ignorance.

But the president and his aides have, at least on the public record, retreated from most of these positions. In December 1982 Henry Rowen, then chairman of the President's National Intelligence Council, testified before the Joint Economic Committee of Congress that Moscow did not enjoy strategic superiority. In 1983 the President's Commission on Nuclear Forces, informally known as the Scowcroft Commission, politely denied the idea that the capabilities of Soviet ICBMs had created a window of vulnerability for the U.S. strategic deterrent. Indeed, in 1983 and 1984 the Pentagon reported to Congress that the superpowers were roughly equal in ICBM technology. And in February 1983 Reagan conceded that while he continued to believe that the United States "had become a dubious deterrent to aggression," he did not consider this situation "the exclusive fault of any one [American] leader or party."

These shifting viewpoints have wrought changes in the administration's arms control proposals as well. At the Strategic Arms Reduction Talks (START), which replaced SALT, the president has repeatedly modified his proposals, moving steadily away from an emphasis on reducing throw-weight, to the current build-down-centered proposal, which stresses limits on warheads rather than on launchers and does not concentrate so pointedly on Moscow's chosen strategic priorities. In October 1983 the president even reportedly told a group from Congress that he approved the original START proposals without realizing how dependent the Soviet arsenal is on heavy, land-based missiles.

All recent presidencies have followed a comparable pattern. Carter initially failed to conclude the SALT agreement negotiated by two previous presidents and, like Reagan, claimed that he had a better way to reduce strategic arsenals.

The Carter administration also came into office determined to reverse what it viewed as the obsessive preoccupation with global power politics of the Nixon and Ford administrations. Carter and most of his advisers argued that a single-minded anticommunism had perversely identified the United States with noncommunist dictators who abused their citizens. Instead, Washington's favor should be contingent upon respect for human rights. The Carter team also supported expanded ties with China and the Third World, greater use of the United Nations to build world order, plus a stricter line toward South Africa's apartheid regime. Plans included negotiations for an Indian Ocean zone of peace, a cap on transfers of both conventional arms and proliferation-prone nuclear technology, and the withdrawal of 40,000 U.S. combat troops stationed in South Korea.

Violent turns of events elsewhere, however, persuaded Carter to embrace some policies he had earlier decisively rejected. The Soviet invasion of Afghanistan not only finished off SALT II but also ended the already threadbare evenhanded policy toward Moscow and Bei-

jing; prompted a 3.3 per cent real increase in proposed military spending—which in fact foreshadowed the Reagan build-up—along with the development of a Rapid Deployment Force and the acquisition of basing facilities in Egypt, Kenya, Oman, and Somalia; and forced modification of both nonproliferation and human rights policies regarding Pakistan and Argentina. Further, attempts to keep Argentina from subverting the new grain embargo brought a visible shift in the human rights policy, which despite pragmatic modifications was still basically in place.

Nearly two decades earlier President John Kennedy, according to some reports, acknowledged error regarding his policies toward Vietnam, Cuba, the missile gap, civil defense, and China. His posture evolved from the ringing combativeness of his inaugural address to the sober re-evaluation of U.S.-Soviet relations he urged in a speech at American University in 1963. After a lifetime of anti-Soviet rhetoric, President Richard Nixon pursued détente with the two communist giants.

Creating confusion in the Kremlin—whether by the acrobatics of Carter and Reagan or by Nixon's calculated unpredictability—is not necessarily a bad idea. It could conceivably shake the Soviets loose from some rigidly fixed positions. But it is disturbing when a sympathetic foreign journal such as the *Economist* observes "a disconcerting pattern to recent American presidencies." Citing the twistings, turnings, and outright somersaults of U.S. policies, the editors asserted in the January 29, 1983, issue: "This pattern is troubling not just for the President and his party but for anyone with an interest in seeing the United States with an effective form of government."

The Advisory System

It would be wrong, however, to blame U.S. policy gyrations solely on the leader in the Oval Office. The intellectual demands placed on modern presidents verge on the unachievable. With the exception of studious boys like young Harry Truman, who read history while others played ball, and compulsive practitioners of continuing education like Jimmy Carter, modern presidents and their lieutenants by and large live on the intellectual resources they bring with them to Washington. Thus the quality of their advisers is crucial. Chief executives cannot and should not rely too heavily on expertise at the expense of durable principles and old-fashioned horse sense. But to wade skillfully through problems and processes extraordinarily different from those encountered in a state house, law office, or board room, leaders must make intelligent use of expert opinion. Regrettably, however, the advisory function is a weak point in a flawed system.

The most disturbing aspect of recent presidents' performance in this sense has been their steadily decreasing reliance on professional bureaucracies and on the indispensable knowledge career experts can supply about history, politics, economics, culture, psychology, technology, and the track records of other players in the international game. The problem arises in part from the recent tendency of presidents to entrust crucial foreign-policy issues to their White House staffs rather than to the State Department. But even the cabinet departments with formal national security responsibilities are increasingly staffed down to the middle levels with political appointees chosen not because they are qualified but because they are owed political favors or seem ideologically compatible.

Political reformers have fought patronage since the present-day party system began taking shape in the early 19th century. In 1883 they finally pushed through Congress the Pendleton Act, the first of a series of laws to create a professional civil service. The cause of meritocracy received an additional boost after World War II with America's commitment to a permanent world role. In 1949 the Truman administration set a major precedent when it named a senior career diplomat to the subcabinet position known today as undersecretary of state for political affairs. This practice, which is intended to provide stability in a key diplomatic position, was inspired by the British system of permanent cabinet undersecretaries. Subsequent administrations tried to develop the concept of a senior executive

service to support further professionalism. In addition, periodic legislative reform has upgraded U.S. career services to the point where today the skills and expertise found in America's foreign-policy and national security bureaucracies equal those of any other country. But the ideal so far has been difficult to realize.

Most new presidents have come into the White House harboring deep suspicions about their inherited experts precisely because the latter had dutifully served the previous administration. In the Eisenhower administration Secretary of State John Foster Dulles brought to the department a security chief who administered crude political loyalty tests that intimidated nonpartisan clerks and career officials alike. The Kennedy team in turn openly scorned Eisenhower holdovers. Nixon's longstanding antipathy toward the bureaucracy became a self-fulfilling prophecy. Carter's entourage viewed career officials with, as one member put it, "respect and suspicion," while the Reagan team scarcely conceals its contempt for anyone who makes a career of public service. According to Dean Rusk, who served for 8 years as secretary of state, new administrations are slow to "recognize what a tremendous asset they have in the abilities of this professional service."

By the 100th anniversary of the Pendleton Act, the Reagan administration was regularly putting loyalists in working-level positions once filled by career officials, including deputy assistant secretaries, deputy chiefs of mission, and even consuls general. A study in mid-1981 of approximately 150 middle-level appointments revealed that nearly 60 per cent of the officials selected had no prior service in the executive branch.[3] Political appointees make up 40 per cent of the ambassadors and assistant secretaries of state appointed by the Reagan administration, up from 26 per cent during the Carter administration.

A president's cabinet-level lieutenants and some of the White House apparat should of course reflect a president's particular style and policy preferences. Yet while time-serving, unimaginative bureaucrats are as much a burden in Washington as they are in local government, private businesses, academe, or other walks of life, the outsider's glib assumption that career civil servants will be disloyal to a new administration is an unwarranted calumny based on ignorance.

The drawbacks of a transient and amateur-filled advisory pool have become apparent even to some of the president's senior advisers. At a June 1982 Heritage Foundation conference, in the middle of an extraordinary public indictment of "U.S. ineptitude in international relations," Reagan's chief U.N. envoy Jeane Kirkpatrick complained about "too rapid turnover," illustrated by the fact that "the two principal policymaking offices of our international organization operation are involved in musical chairs—not staying long enough to really get to know the job well." But the president himself saw nothing wrong with this situation, rhetorically asking at a May 17, 1983, news conference: "Well, isn't almost anyone that you appoint to a position in government someone that you either know or you know through someone?"

Usually, however, even the most resolute White House outsider eventually discovers the need for impartial experts who are capable both of loyalty and of making sense of Shiite Islam, teaching some crucial history about Central America or the Soviet Union, and even challenging the president's favorite policy premises. In his third year in office, for example, Reagan took a big step toward professionalizing the National Security Council (NSC) by naming Robert McFarlane, a retired Marine Corps colonel, to replace William Clark as national security adviser. Clark, a trusted aide during Reagan's gubernatorial days, readily admitted to having "no formal training in foreign policy" and told one interviewer that he had "never felt inhibited by a lack of background.... We have too many facts."[4]

When considering reforms in the foreign-

[3]New York Times, *March 20, 1983, sec. 4, p. 1.*

[4]*Steven R. Weisman, "The Influence of William Clark,"* New York Times Magazine, *August 14, 1983, p. 18.*

policy process, it is just as important to weed out bad ideas as to cultivate promising ones. One set of schemes in the former category focuses on conflicts between the State Department and the NSC. Despite the formal delegation of responsibilities to the departments of Defense, State, and Treasury and the quadrennial pledges to return foreign policy to the State Department, decision making tends to flow to the White House and refuses to return—largely for good reason. Foreign policy today also includes economic and defense policy. Not only does each transcend the mission of any single agency, but each often contains prominent domestic components. The president is the only real coordinator.

A first-rate White House staff can help clarify this ensemble for a president while coordinating the welter of words and deeds that make up American foreign policy. But this staff should be a relatively self-effacing expediting agent that does not try to pre-empt the responsible agencies. Even this kind of NSC staff would unavoidably antagonize its cabinet and agency counterparts, but such rivalries need not be destructive and may have the beneficial result of providing the president with multiple points of view.

The second group of remedies to be wary of are formal structural reforms, such as a single 6-year presidential term, that require amending the Constitution. That is a good prescription for the long run. But the amendment process is notoriously slow. Meanwhile, a number of improvements capable of bringing the constancy characteristic of a president's third year to his first require nothing more complicated than the stroke of a White House pen or the passage of a congressional joint resolution.

Reforming the System

The first group of proposals addresses Congress's unique role as the president's constitutional partner—and counterbalance—in making foreign policy. Congress cannot and should not try to administer foreign policy, and the productive tension between the executive and legislative branches created by the Constitution should be preserved.

But Congress can remove some of the unnecessary burdens it places on senior administration officials. Cabinet and subcabinet officers must not only run complex bureaucracies but also must appear before the multitude of congressional panels involved in any aspect of foreign-policy authorization and appropriations bills, that is to say, virtually every committee in Congress. Cyrus Vance has written in his 1983 book *Hard Choices* that congressional matters consumed fully one-fourth of his time as secretary of state. As he and others have recommended, the United States should adopt a variation of the useful British parliamentary custom of regular weekly question periods on the floor of either or both houses. The secretary of state or, in his absence, the deputy secretary, would appear for a stated period of time to respond to questions from lawmakers on any aspect of foreign policy.

Both houses have distinct constitutional responsibilities and thus need their own special committee structures. But more use should be made of joint hearings by related panels such as the Senate Foreign Relations and House Foreign Affairs committees. In addition, joint special hearings of the two foreign relations committees, perhaps held annually and focusing on U.S. goals and interests, could strengthen domestic support for American policies.

More use should also be made in foreign affairs of executive-legislative commissions such as those recently established for immigration policy and Social Security reform. Self-imposed limitations on such joint ventures could have deprived the country of creative foreign-policy innovations such as the U.N. Charter, the Marshall Plan, and the North Atlantic Treaty—all products of bipartisan interbranch cooperation after World War II.

Both the president's State of the Union address and the Defense Department's annual posture statement provide Congress and the American people with important insights about U.S. global strategy. These statements could be usefully supplemented by annual reports focusing specifically on U.S. foreign-policy programs and objectives. The models to

follow are the concise and revealing reports published by the Nixon White House, not the intolerably lengthy and dull volumes prepared by the State Department to compete with that White House product.

At the same time, congressional leaders normally do not convey their collective views to a president unless the White House seeks their advice—in other words, their support—during a crisis. The congressional leaders from both parties could greatly improve the presidential transition process by forwarding their accumulated wisdom to presidents at the start of each term in the form of a bipartisan memorandum of advice.

The transition period, which is being examined by several private study groups, might be further improved by two recommendations. First, the new White House staff could invite a dozen or so respected current and former leaders from different regions of the world to submit to the president single-page memos conveying information he should know about specific regions before carrying out any election promises. Second, a nearby university center could hold a series of preinaugural seminars for the new high command similar to those conducted for new members of Congress by Harvard University's Institute of Politics.

Decision making tends to flow to the White House and refuses to return [to the State Department]—largely for good reason.

The second major category of improvements is designed to make far more systematic use of the national resource of experience and learned wisdom that reposes in past leadership. The United States has had six presidents and eight secretaries of state since 1960, but this priceless talent pool is treated by America's throwaway society like any other disposable commodity. Upon leaving office, American presidents acquire a marginally politer version of the nonperson status Soviets sometimes assign their fallen leaders. Many former presidents have little to do but hustle for publishers' advances, an activity that is not only unseemly but cheats the country out of any return on the enormous investment it makes in educating its presidents. Former presidents and former secretaries of state are rarely brought into the policy process by sitting administrations on anything more than an informal, haphazard basis.

Former presidents have the privilege of the Senate floor but rarely if ever use it. Congress should pass a joint resolution encouraging their regular participation in major debates concerning foreign and national defense policy. Former presidents and former secretaries of state should be asked to submit confidential memoranda to the leadership of both houses. They should also be regularly called upon to testify at the annual foreign-policy hearings suggested earlier. Outgoing presidents should also revive the custom of delivering a major farewell address on the premise that it might be at least as valuable to the republic as the inaugural address of a new president.

Secretary of State George Shultz has done a commendable job of drawing on the accumulated wisdom and experience of his predecessors. But the practice should become institutionalized in the form of a State Department general advisory committee that would give the current secretary a forum for sharing his concerns regularly with the only group that fully comprehends his burdens.

A more comprehensive step would be the creation of a council of state including former presidents, former secretaries of state, defense, and treasury, and former congressional leaders. Countries with systems as disparate as Great Britain and Yugoslavia have found such senior councils valuable both to prevent their pool of wisdom from becoming stagnant and also to acknowledge high government service. The U.S. Senate, after all, was originally conceived as a body of individuals sufficiently tenured to rise above the mundane. The principle is still sound, and the arrangement could eventually be formalized through a constitutional amendment.

Other sources of good advice can be found further outside government. At times of crisis former officials and other respected national

leaders often collectively called "the wise men" may be summoned to confer with the president. Sometimes these groups have arrived at a bipartisan consensus that has persuaded presidents to back off from failing policies. Johnson's decision to de-escalate in Vietnam and Carter's handling of the 1979 flap over the rediscovery of a Soviet military brigade in Cuba are two prime examples. Carter also recruited former Under Secretary of State George Ball to help formulate U.S. policy toward Iran during the shah's final days. National security adviser Zbigniew Brzezinski sought the advice of nongovernmental Middle East specialists during the Iranian hostage crisis, and Shultz conferred with a panel of unofficial Soviet specialists. Consideration should be given to recreating on a more serious basis the advisory committees that former Secretary of State William Rogers created for each major bureau but that subsequently expired.

Presidential commissions to explore national policy issues are often used to produce policy recommendations already decided upon by the White House. One example is the 1971 Lodge Commission on the future of the United Nations. Alternatively, if they become too independent or heretical, commissions are treated as if leprous, a fate that befell the Oppenheimer nuclear weapons panel of 1952. But the Kissinger Commission on Central America and the Scowcroft Commission on strategic weaponry both seem to have significantly influenced administration policies, which suggests that presidents and secretaries of state could profitably establish such panels early in their terms before crises occur.

The final category of proposals addresses the use and misuse of career expertise by presidents and their inner circles. The place of competent senior career officials in the policy machine needs substantial upgrading if the United States is to reduce the high costs of amateurism at the top. At least two-thirds of the country's top-level foreign-policy slots—ambassadors, assistant secretaries and their immediate deputies, and senior NSC staff members—should be reserved for the ablest career Foreign Service officers and civil servants. Reserving one-third of these posts for political appointees and other outsiders would amply satisfy the need for new blood and political rewards.

The United States should also adopt the valuable position of permanent undersecretary found in parliamentary systems. In all major departments engaged in foreign and defense policy, eminent senior career officials should hold a new number-three post designated permanent deputy secretary. This career official would be well placed to help new administrations carry out their programs and at the same time minimize the pitfalls of inexperience, damaging factual ignorance, and embarrassing reinvention of the wheel.

Presidents and cabinet officers can further protect themselves from avoidable error by adopting still another British practice and routinely including in their innermost personal entourages the equivalent of a private secretary. Even during the most radical changes of government in Great Britain, such as the transition in 1979 from James Callaghan to Margaret Thatcher, able career officers are immediately placed at the right hands of the new leaders to smooth their way and help reestablish governmental coherence through liaison with their opposite numbers on the personal staffs of cabinet officers. Although different from the loyalists with whom new presidents usually surround themselves, a private secretary should make it easier for a new team to implement achievable foreign-policy objectives. The national security adviser, who would continue to coordinate and advise the president at the policy level, would also benefit from a discreet senior assistant to the president able to facilitate policy implementation by networking throughout the enormous federal bureaucracy.

Rather than developing well-intentioned but questionably effective institutions such as a national peace academy, each administration should better use the educational and research potential of existing government institutions of higher training such as the State Department's Foreign Service Institute (FSI) and the Defense Department's National Defense University (NDU), which educate some of the top

talent slated to enter the diplomatic and military command levels in the national security apparatus. The FSI should expand its professional training in area studies and political diagnosis. Similar benefits could accrue if the NDU extended its use of simulation beyond war games to strategies for preventing, minimizing, and terminating armed conflicts. Both should expand the development of other policy analysis and planning techniques to foster the integrative thought essential for confronting today's complex global agenda.[5]

The NSC apparatus is excessively skewed toward military approaches, an essential but insufficient component of a broadly conceived U.S. posture. In contrast to the allegedly softer-headed souls who seek compromises through diplomatic solutions, NSC staff members habitually view themselves as tough-minded. This trend unhealthily encourages a one-dimensional view of America's global challenges by focusing attention on Soviet transgressions to the neglect of longer-term nonmilitary factors. The chronic crisis mentality of the NSC also scants the range of mutual economic, financial, technological, and resource dependencies that drive much of the politics of the late 20th century. To help remedy these defects, the NSC Global Issues cluster should be revived, and high-level coordination of foreign economic policy returned to its logical place—the White House.

Finally, one constitutional amendment should be considered: The president should assume office no later than early December and thereby eliminate the protracted lame duckery that paralyzes policy and keeps the leading global actor effectively off the world stage for almost 3 months. Thanksgiving week might be even more appropriate. The outgoing president could issue a proclamation of thanks for his deliverance, and his successor could come to grips as quickly as possible with the limits as well as the possibilities of the highest office in the land.

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[5]*See the author's* The Foreign Policy Process: A Modern Primer *(Englewood Cliffs, New Jersey: Prentice-Hall, 1982) and "Reflections on Gaming,"* Orbis, *Winter 1984.*

CLAIBORNE PELL
RHODE ISLAND

pl

United States Senate

WASHINGTON, D.C. 20510

March 21, 1984

Dear President Carter:

As you can see from the enclosed letter, from myself and Senator Mathias, the Senate Subcommittee on Constitutional Amendments has scheduled a hearing on my proposed Amendment to advance the date for Presidential Inaugurations.

I want to add my own personal hope that you might be able to come to Washington to present your views on the amendment to the Committee. It would be a really great service and a tremendous help to the Congress.

I should add that I am eager personally to hear what you think of the proposal.

My best wishes to you and to Rosalynn.

With respect and regard,

Ever sincerely,

Claiborne Pell

The Honorable Jimmy Carter
75 Spring Street, SW
Atlanta, Georgia 30303

cc Claiborne -
Jim not in favor of this change, & in general am reluctant to amend the Constitution unless there is a clear & present need -
Thanks.
Jimmy

CHARLES McC. MATHIAS, JR.
UNITED STATES SENATE

March 21, 1984

Dear President Carter:

We are writing to solicit your views on a constitutional amendment that we have proposed which would advance the date of Presidential inaugurations from January 20 to November 20. The same proposed amendment (S. J. Res. 71) would provide that the terms of Members of Congress would begin on November 15 of election years.

The Subcommittee on the Constitution of the Senate Judiciary Committee has scheduled a hearing on this proposal for Tuesday, April 24, 1984. Your views on the proposal would be of immeasurable help to the Subcommittee and we hope that you will be willing to share them. We are making a similar request to President Ford.

We have proposed this amendment in order to avoid an unnecessarily long interregnum between Presidencies. We believe this hiatus is particularly disadvantageous to our Nation in the conduct of its foreign relations. The proposal would at the same time eliminate lame-duck sessions of Congress which are rarely productive and which run counter to the principles of representative government.

We would hope that you would find some merit in this proposal, but we and the Subcommittee would find your counsel most valuable whether favorable or unfavorable.

We would be honored if you would be able to present your views in person at the hearing. Should that not be possible, a written statement would be most welcome.

We make this request with the knowledge and encouragement of the Subcommittee, whose chairman, Senator Hatch, will of course extend a formal invitation in the event you are willing to provide your views of the proposed amendment.

Thank you in advance for your consideration of this request.

With best wishes,

Sincerely,

Claiborne Pell
United States Senator

Charles McC. Mathias, Jr.
United States Senator

GERALD R. FORD

April 2, 1984

Dear Mac:

I have received the joint letter from Senator Pell and you in reference to proposed constitutional amendments to advance the date of the Presidential Inauguration from January 20th to November 20th, and set the terms of Members of Congress to begin November 15th of election years.

I have given a great deal of thought to the proposed constitutional amendment in reference to the date of the Presidential inauguration. It is my considered judgment that November 20th would be too short a time after the election. A newly elected President requires time to select his Cabinet and other Administration officials. A two to three week period is insufficient to assemble this critical group with all the checking that must be done, plus Congressional action on the Cabinet nominations.

Furthermore, if there is ever a contested Presidential election, it would most likely require more than a two to three week period to determine the winner.

There is nothing sacrosanct about January 20th for an inauguration. Perhaps a mid-December or earlier January date would overcome the two questions I have raised.

I would not approve a November 15th date for the term of a member of Congress. I believe January 3rd should be retained. Newly elected members need time to rearrange their personal affairs. The political party organizations in the Senate and House of Representatives take time to be set up. Lame-duck sessions are not desirable, but can best be avoided by Congress completing its responsibilities more expeditiously prior to the national election date. A final adjournment, with all business, including appropriations, completed before the beginning of the new fiscal year would obviate the need for a lame-duck session, except in the instance of a national crisis.

Regrettably, because of an abnormally busy schedule in the months ahead, I will not be able to testify in person. You have, however, my permission to include my above views in the committee record.

Warmest, best wishes,

Jerry

The Honorable Charles McC. Mathias, Jr.
United States Senate
Washington, D.C. 20510

NATIONAL ASSOCIATION OF SECRETARIES OF STATE

April 23, 1984

The Honorable Orrin Hatch
Chairman, Subcommittee on Constitution
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

The National Association of Secretaries of State is the oldest organization of public officials having been created at the St. Louis World Exposition in 1904. Forty-one Secretaries of State serve their respective jurisdictions by having a role in the administration of elections.

You have asked our position on Senate Joint Resolution 71 which provides for a constitutional amendment which, if enacted, would advance the date for the inauguration of the President and Vice President of the United States from January 20 to November 20, and members of Congress would begin the terms of office November 15.

Our Association appreciates very much the opportunity to express our position. I have surveyed the Association membership and the results are enclosed. To summarize, eighteen Secretaries have expressed for various reasons opposition to the proposed amendment, two support it, and one expresses no position.

Because of the importance of this matter, I have added it to the agenda of our National Association of Secretaries of State Conference to be held in Annapolis in July. At that time, a fuller discussion will permit a resolution of the Association to be voted on either in support of or opposition to the proposed amendment.

We would be interested in results of the testimony you are now gathering.

Again, on behalf of the National Association of Secretaries of State, thank you for the opportunity to comment and respond to Senate Joint Resolution 71.

With every good wish.

Cordially,

JACK H. BRIER, President
National Association of Secretaries of State

JHB:lek

Enclosures

NATIONAL ASSOCIATION OF SECRETARIES OF STATE

COMMONWEALTH OF VIRGINIA
OFFICE OF THE GOVERNOR
SECRETARY OF THE COMMONWEALTH
RICHMOND 23219

OFFICERS
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2nd Floor, Capitol
Topeka, Kansas 66612
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GENTRY CROWELL
Tennessee
ROSE MOFFORD
Arizona
DON L. SIEGELMAN
Alabama
JIM WALTERMIRE
Montana

MEMORANDUM

DATE: March 15, 1984

TO: Members of N.A.S.S.

FROM: Jack H. Brier, President

Enclosed is a letter from Senator Claiborne Pell, as well as a Senate Joint Resolution.

Please read both carefully and extend to me your thoughts on

(1) whether N.A.S.S. ought to participate in the hearings, and

(2) your thoughts as to the position of N.A.S.S. on this matter.

Finally, please mark your calendar for the Annapolis Conference July 8-11, 1984. It will be the best ever!

JACK
— NO TO BOTH
— WAIT ALL BOOK THAT
TRANSITIONS AND
TIME IS CRUCIAL FOR
A NEWLY ELECTED PRES
TO GET THINGS OUT
LAURIE
cc NORM SIMS

SECRETARIAT: The Council of State Governments, Norm Sims, P.O. Box 11910, Lexington, Kentucky 40578 Telephone (606) 252-2291

State of North Dakota

Ben Meier
SECRETARY OF STATE
701-224-2900

Robert R. Schaible
DEPUTY

DEPARTMENT OF STATE
Bismarck, North Dakota 58505

March 19, 1984

The Honorable Jack H. Brier
Secretary of State
Second Floor Capitol
Topeka, KS 66612

Dear Jack:

This will acknowledge your memorandum of March 15, regarding the amendment to the Constitution of the U.S. by Senator Claiborne Pell of Maryland.

As far as I am concerned I would refuse the amendment, because many states have not even finished there official canvassing of the general election before he wants the President of the United States and Congress to take office. I think that alot of states would have to move up their general election to sometime in October.

That is my feeling, Jack.

Sincerely,

Ben Meier

BEN MEIER
Secretary of State
BM:gjk

STATE OF SOUTH DAKOTA

Secretary of State

State Capitol Building
Pierre, SD 57501
605-773-3537

ALICE KUNDERT
Secretary of State

JAY D. VOGT
Deputy

March 19, 1984

The Honorable Jack H. Brier, President
National Association of Secretaries of State
2nd Floor, Capitol
Topeka, KS 66612

Dear Jack:

Thanks for sending the copy of Senator Pell's proposed constitutional amendment regarding moving forward the dates that newly elected presidents and congressmen and women would take office.

This would pose problems for us - our state canvassing board meets within 15 days after the election to officially canvass all offices above the county level. There are years when this canvass is not completed by the 15th of November. We would be unable to get the official certification to the appropriate parties in time for the earlier dates of taking office.

In addition, this would effectively preclude any recounts for any of those positions.

As South Dakota's law currently stands, we would be unable to meet those deadlines. And I'm not sure we could change the law to accommodate the change at the federal level--there just wouldn't be enough time.

Best personal regards.

Sincerely,

Alice

(Miss) Alice Kundert
Secretary of State

ak/page

NATALIE MEYER
Secretary of State
State Capitol Building

DEPARTMENT OF STATE
1575 Sherman Street — Second Floor
Denver 80203

ADMINISTRATION 866-2762
CORPORATIONS 866-2361
ELECTIONS 866-2041
LICENSING & ENFORCEMENT 866-2461
LOBBYIST REGISTRATION 866-2021
NOTARIES PUBLIC 866-2355
UNIFORM COMMERCIAL CODE 866-2563

March 20, 1984

The Honorable Jack H. Brier, President
National Association of Secretaries of State
Second Floor, State Capitol
Topeka, Kansas, 66612

Dear Secretary Brier:

This is in response to your request for my thoughts about whether N.A.S.S. ought to participate in the hearings on Senate Joint Resolution #71 and the position our Association should take on the matter.

(1) Yes, our Organization should be represented and should present opposition to this amendment because the general election is November 6, 1984, and in Colorado the 63 counties have twenty days to canvass. We don't have official election results for thirty days.

(2) Since our primary election is late (September), the Justice Department has held up our absentee ballot count an additional ten days in order to protect the privilege and availability of the ballot for overseas voters.

(3) Colorado could not comply with this change and strongly urges defeat of this amendment.

Sincerely,

Natalie Meyer

Natalie Meyer
Secretary of State

NM/ms

STATE OF NEVADA
Wm. D. SWACKHAMER
Secretary of State
DEPARTMENT OF STATE

Telephone (702) 885-5203

MILLIE JOHNSON
Deputy
Corporate Division

ABNER W. "Buster" SEWELL
Deputy
Securities Division

CARSON CITY, NEVADA 89710

March 20, 1984

Honorable Jack H. Brier
Secretary of State
State of Kansas
Second Floor, Capitol
Topeka, Kansas 66612

Dear Secretary Brier:

In response to yours of March 15th, I would have no opinion on whether N.A.S.A. should participate, but I would have reservations about moving the dates up that far. Some years the General Election can be as late as November 7th, and that certainly does not give enough time, especially if a re-count is ordered.

Thank you for allowing me to comment.

Very truly yours,

Wm. D. Swackhamer
Secretary of State

WDS:mg

James H. Douglas
Secretary of State

Paul S. Gillies
Deputy Secretary of State

Main Office: (802) 828-2363
Corporations & Records: (802) 828-2386
Professional Licensing & Registration: (802) 828-2363
State Papers: (802) 828-2363

STATE OF VERMONT
OFFICE OF THE SECRETARY OF STATE
109 State Street
Montpelier, Vermont 05602

March 20, 1984

The Honorable Jack H. Brier
Secretary of State
Second Floor, Capitol
Topeka, Kansas 66612

Dear Jack:

Regarding your memo on the subject of Senator Pell's Resolution, I would be very concerned about such an early commencement date to the Congressional term of office. Our state canvassing committee meets one week after the date of the general election which could be as late as November 8. So the canvassing committee wouldn't even meet until November 15th. We use mostly paper ballots in Vermont, and I can't possibly believe that we would be able to determine a winner by the 15th of November. I think it'd be very appropriate for NASS to participate.

Best wishes.

Sincerely,

James H. Douglas
Secretary of State

JHD/vma

JAMES H. "JIM" BROWN
SECRETARY OF STATE
STATE OF LOUISIANA

P. O. Box 44125
BATON ROUGE, LOUISIANA 70804
(504) 342-5710

March 21, 1984

Honorable Jack H. Brier
President
National Association of Secretaries of State
2nd Floor, Capitol
Topeka, Kansas 66612

Dear Jack,

After reading Senator Claiborne Pell's letter and Joint Resolution regarding terms of office for President, Vice-President and Congressmen; I would like to go on record as being very much against the idea.

One observation is that the change would reduce the time between the election and inauguration to a period too brief to allow an organized transition. As our state's chief elections officer, I also find the proposed change would seriously interfere with the electoral college meetings and any legal challenges to election results. The time frame suggested by Senators Pell and Mathias would be virtually impossible to work within.

I hope N.A.S.S. will oppose the proposed amendment and send a representative to the hearings to express our concerns.

Thank you for sending this information to me. Please keep us informed of its progress.

With best wishes,

Jim

James H. "Jim" Brown

JHB/ss

SECRETARY OF STATE
STATE OF MONTANA

Jim Waltermire
Secretary of State

State Capitol
Helena, Montana 59620

March 21, 1984

The Honorable Jack H. Brier
Secretary of State
State of Kansas
Second Floor, State Capitol
Topeka, Kansas 66612

Dear ~~Mr. Secretary:~~ Jack:

I've reviewed the proposed Senate Joint Resolution 71 and Senator Pell's letter. As I read the proposed Resolution, Senators Pell and Mathias want to advance the date for assuming federal elective offices, thereby eliminating the so-called "lame duck" period. They apparently regard a "lame duck" President and, perhaps, a "lame duck" Congress a source of real mischief. Although the Senators may have a legitimate concern, I can't endorse their proposed Amendment as the best way, or even a good way, to address the problem.

I see two difficulties with their proposal. First, Montana statutes provide twenty days to complete county and state-wide vote canvassing. This proposal would reduce the canvassing period to eight days in the extreme case. Shortening the canvass period could work a real hardship on the many Montana counties that continue to use paper ballots and manual counting systems. Montana might not have even commissioned its Congressional Members by the contemplated November 15 commencement of term.

In addition to this mechanical difficulty, this Amendment would force a newly-elected President and Congressional Members to constitute a new government in two weeks, give or take a few days. The transition between Presidential administrations is always a tremendously complex situation. I can't see how the public interest benefits in any way by reducing the grace period between election and inauguration from three months to two weeks.

While I do not object to N.A.S.S participation in the upcoming Judiciary Committee hearings, this proposed Amendment seems too far off target to warrant serious consideration. Since it would have an impact on state and local election administration, perhaps we have an obligation to note as much for the Senate record.

Regards,

Jim Waltermire

Jim Waltermire
Secretary of State

37-533 O - 85 - 15

Secretary of State • State of Wyoming

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Corporations 777-7311
Securities 777-7370
Elections 777-7186

THYRA THOMSON
Secretary of State

LINDA NORMAN
Deputy

March 21, 1984

The Honorable Jack H. Brier
President
National Association of
Secretaries of State
2nd Floor, Capitol
Topeka, KS 66612

Dear Jack:

In answer to your memorandum of March 15, 1984, concerning proposed U.S. Senate Joint Resolution 71, we are pleased to offer the following comments.

1. NASS ought to participate in hearings on this proposal.

2. We oppose S.J. RES. 71 for these reasons.
Advancing the date for inauguration of the President and Vice-President from January 20th, to November 20th, and providing that terms of members of Congress begin on November 15th, creates several timing conflicts.

   a. The President would take office prior to the meeting of the presidential electors. The meeting of the Wyoming Presidential Electors is held on the Monday following the second Wednesday in December (December 17, 1984).

   b. The newly-elected members of Congress would take office under the proposal prior to receipt of the official certification of the election results by Congress.

      In Wyoming the State Canvassing Board meets to officially certify the general election results on the second Wednesday following the election (Nov. 14, 1984).

   c. Advancing these dates would not allow time for recounts. By law, a statewide candidate can request a recount within two days after the State Canvassing Board meets.

We trust the above comments are helpful.

Looking forward to the Annapolis Conference.

Sincerely yours,

THYRA THOMSON
Secretary of State

Linda Norman

LINDA NORMAN
Deputy

PETER TALI COLEMAN
Governor

AMERICAN SAMOA GOVERNMENT
OFFICE OF THE GOVERNOR
PAGO PAGO, AMERICAN SAMOA 96799

TUFELE LI'A
Lt. Governor

Serial: 339

March 23, 1984

The Honorable Jack H. Brier
Secretary of State
State of Kansas
Second Floor, Capitol
Topeka, Kansas 66612

Dear Mr. Secretary:

I am writing in response to your memorandum concerning S.J. Res 71.

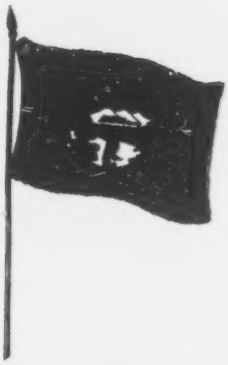
With all due respect to Senator Claiborne Pell and his position on this issue, I simply do not support the idea of N.A.S.S. participating in the hearings. I firmly believe that the existing system is quite adequate and therefore feel N.A.S.S. should take the stance of opposing this joint resolution.

Looking forward to seeing you in the Annapolis Conference.

Best wishes and warmest regards.

Sincerely,

TUFELE F. LI'A
Lieutenant Governor



DEPARTMENT OF STATE

Allen J. Beermann

SECRETARY OF STATE
SUITE 2300 CAPITOL BUILDING
LINCOLN, NEBRASKA 68509
PHONE 471-2554

March 23, 1984

Mr. Jack H. Brier, President
2nd Floor, Capitol
Topeka, KS 66612

Dear Mr. Brier:

Reference is made to memorandum of March 15, 1984, and the Senate Joint Resolution from Senator Claiborne Pell. I believe strongly, that 1) N.A.S.S. ought to participate in the hearings on April 24, 1984, and further, 2) I am unalterably opposed to this Constitutional Amendment. This would literally destroy our election time table and election code, and further, would "mess-up" our election timetable and would require a change in our entire Canvass procedure and meetings of the State Canvass Board. I suspect this will be true in most states.

Finally, I believe, you and members of the election committee should be at the hearing.

Respectfully submitted,

Allen J. Beermann

ALLEN J. BEERMANN
SECRETARY OF STATE

AJB:mrh

"Political Society Exists for the Sake of Noble Living"—Aristotle

ROSE MOFFORD
SECRETARY OF STATE

OFFICE OF
The Secretary of State
STATE HOUSE
Phoenix, Arizona

March 25, 1984

Honorable Jack Brier
Secretary of State
Capitol Building
Topeka, Kansas 66612

Dear Jack:

In response to your inquiry about the United States Senate Resolution S.J. #71 I have the following comments.

As far as Arizona law goes we would need to change our laws on canvassing of the vote. Currently it is November 23 for the earliest date. Adding a reasonable time for challenge it would appear that the November 20th and November 15th dates seem quite early.

Would this also require a change in U.S. Code, Title 3, Chapter 1? Should you have any questions or would like to discuss the matter in more detail, please contact Jim Shumway our Elections Director at 267-VOTE.

With personal regards, I am

Sincerely,

ROSE MOFFORD
Secretary of State

rpm.

STATE OF NEW JERSEY
JANE BURGIO, SECRETARY OF STATE
STATE HOUSE
TRENTON, N.J. 08625
CN 300

March 26, 1984

Honorable Jack H. Brier, President
National Association of Secretaries of State
2nd Floor, Capitol
Topeka, Kansas 66612

Dear Jack:

Thank you for sending me a copy of Senate Joint Resolution 71 concerning advancing the date for the inauguration of the President, Vice President and Members of Congress.

Frankly, I oppose this whole idea as do people from my Election Division. I strongly feel that there has to be some time for the transition process. Having worked through this situation on a state level, I can imagine the problems for the people involved on a federal level to be even more time consuming. If the N.A.S.S. members agree, it might be a good idea to participate in the hearings. However, if the opinion is split, as I think it might be, I would recommend not attending.

It was great seeing you in Vermont. We had a wonderful time. I look forward to the conference in Annapolis.

Sincerely,

Jane Burgio
Secretary of State

Julia H. Tashjian
Secretary of the State
Bernard P. Auger
Deputy Secretary of the State

Office of the Secretary of the State
State of Connecticut
30 Trinity Street
Hartford, Connecticut 06106

March 27, 1984

Mr. Jack H. Brier, President
National Association of Secretaries of State
2nd Floor Capitol
Topeka, Kansas 66612

Dear Mr. ~~Brier~~ Jack,

S.J.Res. 71, which would advance the terms of the President , Vice-President and members of Congress to November 15 following the date of the election, would affect Connecticut as follows:

a) if the election were held on November 8--the latest possible " Tuesday after the first Monday of November"--an election contest could be brought as late as November 18 in accordance with Conn. Gen. Stats. 9-323, which is three days after the proposed term date.

b) if the election were held on November 8, a recanvass of the returns could be held as late as November 14, a day before the proposed term date, and November 18 would be the last possible date for the towns affected by such recanvass to file amended returns. (Conn. Gen. Stat. 9-311).

c) if the election were held on November 8, November 30 is the date for the Board of Canvassers to meet to officially declare the results of the vote. As a practical matter, the process of officially tabulating the vote, including asking the towns to file amended returns on the basis of obvious discrepancies--which is often the case--takes the Secretary of the State at least until the end of November to prepare the final vote tabulation for signature by the Board of Canvassers.

In answer to your inquiry, I think it would be wise for NASS to oppose this legislation.

Cordially,

Julia

Julia H. Tashjian
Secretary of the State

JHT:kfb

See you in Seattle!

PHONE

OFFICE OF THE SECRETARY OF STATE

NORMA PAULUS
SECRETARY OF STATE

C. GREGORY MCMURDO
DEPUTY SECRETARY OF STATE

ELECTIONS AND PUBLIC RECORDS DIVISION
RAYMOND A. PHELPS, JR.
DIRECTOR
141 STATE CAPITOL
SALEM, OREGON 97310-0722
(503) 378-4144

March 27, 1984

The Honorable Jack H. Brier
Secretary of State
State of Kansas
Second Floor, Capitol Building
Topeka, Kansas 66612

Dear Mr. Secretary:

Thank you for the opportunity to comment on Senate Joint Resolution 71, proposed by Senators Pell (R.I.) and Mathias (MD). I understand that Senate Joint Resolution 71 proposes to change the inauguration date for President and Vice President from January 20th to November 20th and the beginning of the term for Members of Congress from January 3rd to November 15th.

Because of the time involved in completing the required post election procedures in this state, we cannot support the proposed change. The new dates would simply not allow adequte time for us to correctly complete our certification procedures. If this proposal were law this year our office would be required to officially certify the election of federal candidates within a few days after election day. There would be no time to recount ballots, audit poll books and perform the many other important tasks necessary to correctly certify an election. We need at least 30 days after a statewide general election to accomplish proper certification of the election.

In the case of the office of President and Vice President of the United States, not only must we officially certify the election of the seven members of the electoral college, but we must also hold a meeting of these members well before November 20th.

As a counter proposal, I suggest that the dates be moved up to December 20th for the inauguration of the President and Vice President of the United States and December 15th to start terms of Members of Congress. In this way our post election administrative procedure can be completed correctly.

Looking at this suggestion in another way, the successful candidates for federal office would receive their Christmas present from the people a little early in an election year.

Sincerely,

Ray Phelps

Raymond A. Phelps, Jr.

State of Rhode Island and Providence Plantations
OFFICE OF THE SECRETARY OF STATE
STATE HOUSE
PROVIDENCE
02903

Susan L. Farmer
Secretary of State

March 27, 1984

The Honorable Jack H. Brier
Secretary of State
State of Kansas
Second Floor, Capitol
Topeka, KS 66612

Dear Jack,

Thank you for your memo and letter from Senator Pell. He had called me before he sent the letter to NASS, and I expressed to him my personal support of his resolution.

It is my feeling that NASS ought to participate in the hearings and that NASS should support the proposal. I am strongly of the belief that it would provide for more efficient and effective government and would provide for greater accountability.

I was sorry not to be able to get to Santa Fe in February, but there were things going on here that prevented my leaving. I look forward to Annapolis in July.

Best regards.

Sincerely,

Susan L. Farmer
Secretary of State

SLF:kjh

STATE OF TENNESSEE
THE SECRETARY OF STATE
NASHVILLE
37219

GENTRY CROWELL

March 27, 1984

The Honorable Jack H. Brier, President
National Association of Secretaries of State
State Capitol
Topeka, KS 66612

Dear Mr. Secretary:

Thank you for your letter of March 15, 1984, and the enclosed S.R. Res. 71 of the 98th Congress, first session, the subject of which is the inauguration of the President and Vice President of the United States being changed from January 20 to November 20.

Jack, I suppose this could be done from an administrative standpoint, but it would be most difficult, due to time constraints between the November elections and the certification of those returns. I never did think much of attempting to change the U.S. Constitution. However, you as president, as far as I'm concerned, are free to testify before Senator Pell's committee and express your position. Let me know what your position is, so it can become my position.

We are looking forward to seeing you in Annapolis.

Sincerely,

Gentry

Gentry Crowell

GC:mrs

STATE OF UTAH
Lieutenant Governor
SALT LAKE CITY, UTAH 84114

DAVID S. MONSON
LIEUTENANT GOVERNOR
BRAD E. HAINSWORTH
DEPUTY

March 27, 1984

The Honorable Jack H. Brier
President
National Association of Secretaries of State
2nd Floor, Capitol
Topeka, Kansas 66612

Dear Jack:

It is my judgment that N.A.S.S. ought to participate in the hearings on Senator Claiborne Pell's proposed Constitutional amendment. The more our Association participates in the market place of ideas, the better. This is particularly true when the issue has a direct bearing on the functions of state Secretaries of State.

This proposed amendment is just another bad idea that ought to be stopped. In the first place, the Constitution should be amended only when there is a compelling need. There certainly is none here, and the burden of proof must rest with those proposing the change. The best interests of the country are currently being met and the present system is causing few, if any, problems.

Second, the proposed change would cause a totally unnecessary administrative nightmare at the state level, certainly in Utah. Those counting paper ballots would be under an impossible deadline that would result in increased errors and the opportunity for fraud. Furthermore, in the past, the Justice Department has compelled at least one state (Colorado) to count absentee ballots up to ten days after the election. That will be November 16th this year. How could Congress possibly be seated on the 15th? Furthermore, our county canvasses are held on November 13th and the state's canvass is on November 26th.

The proposed amendment would simply result in unnecessary confusion and serve no really useful purpose.

I urge the Association to take a strong and determined stand at every opportunity against S.J. Res. 71.

Sincerely,

DAVID S. MONSON
Lt. Governor

DSM: jd

COUNCIL OF STATE GOVERNMENTS
STATES IN

The Secretary of State

San Juan, Puerto Rico

March 29, 1984

Mr. Jack H. Brier
President
National Association of
Secretaries of State
P.O. Box 11910
Lexington, Kentucky 40578

Dear Mr. Brier:

We have studied with great interest the Joint Resolution "Proposing an amendment to the Constitution of the United States relative to the commencement of the terms of office of the President, and members of Congress, (S.J. RES. 71), that Senators Clairborne Pell, and Charles McC. Mathias have proposed".

We agree and support such an amendment, and agree also that NASS should participate in the hearings.

We believe the actual practice of inauguration of elected officials in United States is an anachronism which should be corrected and brought up to date.

Nowadays, with the new technology, the results of elections are known immediately, and communication and transportation have made obsolete the lag of time between election and inauguration.

The actual system renders the interim period a wasteful time, as the President and Vicepresident become lameducks, since no important decisions can be taken in view that those can be changed by the winning party.

Since this amendment could be adopted by states governments, we strongly support the active participation of NASS.

Something that should be carefully studied is the event of a recount in any election, be it for nationwide elections, or in local ones for Senators and Representatives, in view of the shortening of the interim period.

Best regards.

Cordially yours,

Carlos S. Quirós

STATE OF SOUTH CAROLINA
Office of The Secretary of State
POST OFFICE BOX 11350
COLUMBIA 29211

JOHN T. CAMPBELL
SECRETARY OF STATE

TELEPHONES
803-758-2744
803-758-2740

April 4, 1984

Honorable Jack H. Brier, President
National Association of Secretaries of State
The Capitol, Second Floor
Topeka, Kansas 66612

Dear Jack:

In regards to your memorandum of March 15th concerning the proposed joint resolution by Senator Pell and Senator Mathias to advance the date for the inauguration of the President and Vice President of the United States from January 20th to November, my personal opinion is that this amendment would not be advisable. The reason for my thinking is that there must be some time for Presidents and Members of Congress, which need the additional time as it now stands, for the transition in their executive offices.

Look forward to seeing you in Annapolis in July.

Sincerely yours,

JOHN T. CAMPBELL
Secretary of State

JTC/er

Secretary of State
214 State Capitol
Atlanta
30334

Max Cleland
SECRETARY OF STATE
(404) 656-2881

April 16, 1984

The Honorable Jack Brier
Secretary of State
2nd Floor, Capitol
Topeka, Kansas 66612

Dear Jack:

I have no idea whether we should get involved in the issue you presented to me recently.

Good luck!

Most sincerely,

Max Cleland

MC/bg

NATIONAL ASSOCIATION OF SECRETARIES OF STATE

OFFICERS
JACK H. BRIER
President
2nd Floor, Capitol
Topeka, Kansas 66612
J. SIMCOX
President-Elect
Indiana
ANNETTE B. EDMONDSON
Treasurer
Oklahoma
PAUL RIVIERE
Secretary
Arkansas
JAMES H. DOUGLAS
Recording Secretary
Vermont
EXECUTIVE COMMITTEE
THAD EURE
North Carolina
North Dakota
JAMES C. KIRKPATRICK
Missouri
ALLEN C. BEERMANN
Nebraska
JOAN A. GROAT
Minnesota
Connecticut
Arizona
Alaska
Montana

MEMORANDUM

DATE: March 15, 1984

TO: Members of N.A.S.S.

FROM: Jack H. Brier, President

Enclosed is a letter from Senator Claiborne Pell, as well as a Senate Joint Resolution.

Please read both carefully and extend to me your thoughts on

(1) whether N.A.S.S. ought to participate in the hearings, and

(2) your thoughts as to the position of N.A.S.S. on this matter.

Finally, please mark your calendar for the Annapolis Conference July 8-11, 1984. It will be the best ever!

Jack - I have no concern, except I am getting mighty tired of efforts to change everything.

Thad Eure
N.C.

4/21/84

SECRETARIAT: The Council of State Governments, Norm Sims, P.O. Box 11910, Lexington, Kentucky 40578 Telephone (606) 252-2291